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UNITED STATES DISTRICT COURT		
CENTRAL DISTRICT OF CALIFORNIA		

THE HONORABLE VIRGINIA A. PHILLIPS, JUDGE PRESIDING		
United States of America,)	
Plaintiff,)	
)	
vs.)	Case No.
)	ED CR 08-172 (B) -VAP
Vinod Chandrashekm Patwardhan,)	
Defendant.)	
_____)	
REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS		
Day 4		
Los Angeles, California		
Friday, May 1, 2009		
Pamela A. Seijas, CSR, FCRR		
Official Reporter		
Roybal Federal Building		
255 East Temple Street		
Room 181-I		
Los Angeles, California 90012		
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Los Angeles, California, Friday, May 1, 2009

1:22 P.M.

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(Jury Out)

THE COURT: On the record, outside the presence of the jury.

MR. BEHNKE: I'm sorry, Your Honor. Before we start we will ask the witness to step out.

THE COURT: You may be seated. While Ms. Dillard is bringing the jury down the hallway, having reviewed the rule and the authorities just a bit more, I am going to sustain the Government's objection to the questions that counsel for the Defense wish to ask Ms. Yip on the subject. So with that, you can bring the witness back in.

Did you have any further questions about what you're allowed to ask?

MR. GLUCK: I had somewhat of a compromised position that I discussed with Mr. Behnke in the hallway and perhaps it might be worth raising. If I were to ask Ms. Yip, "Did Dr. Patwardhan tell you not to declare it" -- okay. "Did he tell you not to declare it," and she were to say no, and then I were to ask her, "At the time you came in from the Philippines, did you believe that when he brought in drugs, he declared it" --

THE COURT: I don't think I have a problem with the

1 first question.

2 MR. GLUCK: Okay.

3 THE COURT: I would permit you to ask that first
4 question.

5 MR. GLUCK: Okay.

6 THE COURT: The second question I would sustain the
7 objection.

8 MR. GLUCK: You would sustain it?

9 THE COURT: Yes.

10 MR. GLUCK: Okay. I understand the Court's --

11 THE COURT: Thank you. So the witness can come in.

12 (Jury In)

13 THE COURT: Good afternoon. Let the record reflect
14 the presence of the members of the jury, all counsel are present
15 and the witness on the witness stand. I apologize for keeping
16 you waiting this afternoon, ladies and gentlemen.

17 You may resume your examination, Mr. Gluck.

18 MR. GLUCK: Thank you, Your Honor.

19 CROSS-EXAMINATION RESUMED

20 BY MR. GLUCK:

21 Q. Ms. Yip, near you on the counter or maybe on the little
22 shelf is a set of binders, and would you please find the binder
23 that has Exhibit 100 in it. It would be the third of three.

24 A. Binder 3 of 3?

25 Q. Yes. Binder 3 of 3.

1 Do you have that in front of you?

2 A. I have the binder.

3 Q. Would you turn to Tab 100 in there, please.

4 A. Tab 100.

5 Q. Do you see the document in there? Would you turn, please,
6 to the last page of that document. Tell me if you see your
7 signature there.

8 A. Page 15?

9 Q. Yes. On page 15.

10 A. Yes.

11 Q. That is your signature?

12 A. That is my signature.

13 MR. GLUCK: The Defense moves Exhibit 100 into
14 evidence and asks permission to publish it.

15 THE COURT: Objection?

16 MR. WIDMAN: The United States does not object.

17 THE COURT: Thank you. Exhibit 100 is ordered
18 admitted, and you may publish.

19 MR. GLUCK: Thank you, Your Honor.

20 (Defendant's Exhibit 100 was received.)

21 BY MR. GLUCK:

22 Q. Okay. So this is a document entitled "Amended Plea
23 Agreement for Defendant Velma Yip." Do you see this?

24 A. Yes.

25 Q. And just to -- what we were talking about earlier, Page 15,

1 that's your signature there above where it says "Velma Yip"?

2 A. That is my signature.

3 Q. And down at the bottom is the signature of your attorney,
4 Mr. Kevin Riva?

5 A. That's correct.

6 Q. And you -- when you came into this courtroom and entered a
7 guilty plea to the accusation that we talked about earlier, you
8 understood that your guilty plea was governed by this Plea
9 Agreement; correct?

10 A. Correct.

11 Q. I want to talk about some of the provisions in this Plea
12 Agreement. So let me first -- well, the first question I'll ask
13 is was it your understanding that this Plea Agreement involves
14 you pleading guilty to the accusation that we discussed earlier
15 today?

16 A. The accusations?

17 Q. Earlier today we discussed the document -- I'll put it back
18 on. It's Exhibit 244. This document that says information on
19 it. Do you recall discussing that?

20 A. Yes.

21 Q. And we discussed that this is a document accusing you of
22 committing a crime; correct?

23 A. Correct.

24 Q. Specifically it's a document accusing you of committing a
25 Class A misdemeanor?

1 A. That is correct.

2 Q. The Plea Agreement that I just showed you involves your
3 agreement to plead guilty to this accusation; am I right?

4 A. That is correct.

5 Q. So now I have put the Plea Agreement back on the projector.
6 And I'd ask you -- you can either look at the projector or the
7 book in front of you.

8 If you turn to the fifth page of the Plea Agreement --

9 A. The amended Plea Agreement?

10 Q. Yes. The fifth page of the amended Plea Agreement. Do you
11 see the paragraph that has a 9 in front of it or Paragraph 9?

12 A. Yes.

13 Q. Do you see that? It starts off "Defendant." "Defendant"
14 is you; correct?

15 A. That's correct.

16 Q. And you -- and the USAO -- do you know what the USAO is?

17 A. United States Attorney Officer.

18 Q. United States Attorney's Office?

19 A. Office.

20 Q. So that means the prosecutors; right?

21 A. Correct.

22 Q. So "Defendant and the USAO agree and stipulate to the
23 following applicable Sentencing Guidelines factors." And it
24 says Base Offense Level 6.

25 Is it your understanding that this paragraph is a

1 discussion of the appropriate -- or the possible sentence that
2 you will receive pursuant to this Plea Agreement?

3 MR. WIDMAN: Objection, Your Honor. Lack of
4 foundation. Vagueness.

5 THE COURT: The objection is overruled.

6 THE WITNESS: Could you repeat that question.

7 BY MR. GLUCK:

8 Q. Let me take a step back. Do you know what the Sentencing
9 Guidelines are?

10 A. I was informed about it, yes.

11 Q. Is it your understanding that the Sentencing Guidelines
12 give an advisory recommendation as to what the sentence should
13 be in criminal cases?

14 A. Yes.

15 Q. And depending on the case -- I'm sorry. I'll start again.

16 Depending on the offense and various factors, the
17 Guidelines give an advisory recommendation of the particular,
18 for example, term in prison?

19 A. The Guidelines, yes.

20 Q. And so this paragraph here is an agreement between you and
21 the Government that the following Guidelines factors apply, and
22 it says Base Offense Level 6. Do you see that?

23 A. Yes.

24 Q. Do you have an understanding as to what the advisory
25 punishment is for a Base Offense Level 6?

1 A. I have an idea, yes.

2 Q. What is your understanding that the punish -- the advisory
3 punishment level is for a Base Offense Level 6?

4 A. For that misdemeanor charge that I was -- I had done.

5 Q. Let me ask it this way. You do understand that this
6 agreement here in paragraph 9 is an agreement about the advisory
7 punishment level that you will receive? Do you understand that?

8 A. That's correct, yes.

9 Q. What is your understanding as to the advisory punishment
10 level that you will receive in this case?

11 THE COURT: Mr. Gluck, the problem with that
12 question --

13 MR. GLUCK: Okay.

14 THE COURT: There are significant problems with that
15 question.

16 MR. GLUCK: All right. Let me ask it this way.

17 Q. Is it your understanding, Ms. Yip, that putting aside other
18 things that might influence the out -- the actual punishment
19 imposed, is it your understanding that a Base Offense Level of 6
20 equates to 0 to 6 months imprisonment on the advisory
21 Guidelines?

22 THE COURT: It depends on the criminal history
23 category.

24 MR. GLUCK: The Court -- thank you.

25 THE COURT: Since this has been brought up -- because

1 it's the Court's obligation to explain the law to the jury, let
2 me take a few moments and explain a couple of things to the
3 jury.

4 First of all, remember that as I said to you
5 earlier -- and this is very important -- for reasons that I'm
6 sure one side or the other will argue to you at the appropriate
7 time, that is, during closing argument, it may be appropriate
8 for counsel to cross-examine in this area as to Ms. Yip. That
9 is as to under the terms of the Plea Agreement what sentence she
10 could be facing for the crime that she has pled guilty to, which
11 is a misdemeanor.

12 But remember that you are not to consider the question
13 of potential punishment as to the defendant in determining at
14 the end of this case -- as to deliberating on the question of
15 guilt or innocence, all right, as to Dr. Patwardhan. So the --
16 the questions that Mr. Gluck is asking relate only to this
17 witness, and you don't consider punishment or potential
18 punishment in making your -- deciding on your verdict in this
19 case.

20 In very general terms, when a federal judge decides a
21 sentence in a criminal case, he or she is charged with looking
22 at a number of different things. One of those things is what
23 has been referred to right now, and that is the Sentencing
24 Guidelines that are issued by the United States Sentencing
25 Commission. It's only one of the things that we look at.

1 The Guidelines apply two things: an offense level and
2 a defendant's criminal history category. A criminal history
3 category -- the Court determines what that is, of course, after
4 listening to everything from both sides, but a criminal history
5 category that a defendant falls into depends on what they've
6 been convicted of in the past, what offenses they have been
7 convicted of in the past and how recently.

8 So that's a very quick overview of what some of the
9 terms that have you been talking about. It's important, again,
10 to keep in mind that all of this only relates to the questions
11 that are being asked of this witness.

12 Thank you, Mr. Gluck.

13 MR. GLUCK: Thank you, Your Honor.

14 Q. Ms. Yip, let me try to ask the question a different way.

15 Do you have an understanding as to what the maximum
16 punishment -- let me back up. You have not been sentenced for
17 the crime you admitted; correct?

18 A. Not yet.

19 Q. Not yet. Do you have an understanding as to what the
20 maximum sentence you could face is?

21 A. Yes.

22 Q. What do you understand is the maximum sentence you could
23 face for the guilty plea that you have entered?

24 A. Maximum?

25 Q. Yes.

1 A. Is jail time.

2 Q. Of how long?

3 A. I -- I have to look at this thing. It's somewhere in here,
4 and I've read it.

5 Q. Is it correct that it's jail time of up to one year? Have
6 you heard that?

7 A. I believe so, yes.

8 Q. Do you have an understanding as to what the minimum
9 sentence of jail time would be in your case or could be in your
10 case?

11 MR. WIDMAN: Objection, Your Honor. Improper form.

12 THE COURT: Sustained.

13 BY MR. GLUCK:

14 Q. Ms. Yip, is it true that you're hoping to avoid jail time
15 at all?

16 A. I would not want jail time.

17 Q. Right. And you -- do you -- do you understand that you
18 will not necessarily go to jail because of your guilty plea?

19 A. Yes.

20 Q. It's possible that you could avoid --

21 A. It's possible that I will not go to jail.

22 Q. Thank you.

23 Would you turn, please, to Page 7 of the document --
24 actually, you know what? Let me start with Page 6. If you
25 would turn to Page 6 of the document that I just put in front of

1 you or -- I'm sorry -- that you do have in front of you. I'm
2 going to put it on the projector.

3 There is a section there that says "Defendant's
4 obligations." Do you see that?

5 A. Yes.

6 Q. Okay. And this is what -- this is your side of the
7 agreement; correct? This is what you have to do?

8 A. Correct.

9 Q. Now, if you look down at the bottom, do you see the last
10 sentence there? Well, actually, I'm sorry. Let me start with
11 Paragraph C that I'm pointing to here. All right.

12 One of your obligations is to not knowingly and
13 willfully fail to appear for court appearances etc. Do you see
14 that there?

15 A. I do.

16 Q. Do you see under it you're also agreeing on Paragraph E,
17 the very last line there, to not knowingly and willfully fail to
18 be truthful at -- and then carries over onto the next page on
19 Page 7 -- at all times with Pretrial Services, the U.S.
20 Probation Office and the Court. Do you see that?

21 A. Yes.

22 Q. So as part of your agreement, you have an obligation to be
23 truthful with the Court? Do you understand that?

24 A. It's my obligation to tell the truth.

25 Q. Okay. Now, look at Paragraph 14, please. If you look at

1 Paragraph 14, "Defendant further agrees to cooperate fully with
2 the USAO," and that's the prosecutors; correct?

3 A. Correct.

4 Q. "The FDA, U.S. Immigration and Customs Enforcement, U.S.
5 Customs and Border Protection and as directed by the USAO, any
6 other federal, state, local or foreign law enforcement agency."

7 So you have agreed as part of this agreement that you
8 will, quote, cooperate fully with the Government and the
9 Government agencies; correct?

10 A. That's correct.

11 Q. And this cooperation, if I -- if you go further down the
12 page, requires you to, A, be truthful. Do you see that --

13 A. Yes, uh-huh.

14 Q. And you have been truthful, haven't you?

15 A. I've been truthful, yes.

16 Q. It also requires you under B to show up at meetings, Grand
17 Jury and trials; correct?

18 A. That's correct.

19 Q. Including today; right?

20 A. Yes.

21 Q. And C, to produce any documents relating to the matter that
22 the U.S. Attorney's Office asks for; correct?

23 A. Correct.

24 Q. Okay. So to summarize, you have agreed -- well, is it your
25 understanding that this was part of what you agreed to do in

1 order to get the Government to give you something in return? 00:

2 A. I agreed to tell the truth. That's my responsibility. 00:

3 Q. And in return for that, the Government also made some 00:
4 agreements; right? 00:

5 A. Yes. 00:

6 Q. Okay. So the Government has some obligations to you; 00:
7 correct? 00:

8 A. They have obligations, correct. 00:

9 Q. Among the Government's obligations are, if you turn to Page 00:
10 8 -- it's a very long paragraph, so I'll ask generally about 00:
11 your understanding of Paragraph C. It can't even fit on this 00:
12 screen. Okay. 00:

13 Do you have an understanding, Ms. Yip, that the 00:
14 Government has agreed that it won't offer as evidence against 00:
15 you certain statements that you might make in the course of your 00:
16 cooperation, subject to some exceptions as stated in Paragraph 00:
17 C? Do you have any understanding on that? 00:

18 A. Certain statements? 00:

19 Q. You know what? I'm going to move on from this paragraph. 00:

20 A. Yes. 00:

21 Q. All right. 00:

22 Let's talk about Paragraph G on Page 9. Do you see 00:
23 that, Ms. Yip? 00:

24 A. Page 9, yes. 00:

25 Q. Paragraph G says, "If the USAO," which is again the 00:

1 prosecutors; correct?

2 A. I'm there.

3 Q. When it says -- in Paragraph G when it says the USAO,
4 that's the prosecutors?

5 A. Uh-huh. Yes.

6 Q. Say -- okay. "If the USAO determines in its exclusive
7 judgment that defendant has complied" -- I'm sorry -- "has both
8 complied with her obligations under Paragraph 15 and 16 above
9 and provided substantial assistance to law enforcement in the
10 prosecution or investigation of another" -- and then there is a
11 parenthetical, and in quotes it says "substantial assistance,"
12 and it continues "to move the Court pursuant to USFG 5K1.1 to
13 fix an offense level and corresponding Guideline range below
14 that otherwise dictated by the Sentencing Guidelines and to
15 recommend a sentence within this reduced range."

16 This paragraph, Paragraph G, do you understand that
17 depending on your cooperation, the Government may make a motion
18 to reduce your sentence?

19 A. Yes.

20 Q. And that means, as you understand it, that it would be less
21 than what we looked at earlier, the Sentencing Guidelines range?

22 MR. WIDMAN: Objection, Your Honor. For the grounds
23 set forth by the Court before.

24 THE COURT: Sustained.

25 BY MR. GLUCK:

1 Q. Ms. Yip, what do you understand -- well, at Paragraph G,
2 the very first sentence, the very first line says "In its
3 exclusive judgment." Do you see those words?

4 A. Yes.

5 Q. What do you understand that to mean?

6 A. It's the judgment of the USAO.

7 Q. The prosecutors?

8 A. Correct.

9 Q. So if they decide that they don't want to make that motion,
10 is it your understanding that anyone can force them to make that
11 motion?

12 A. My understanding, sir, is my obligation and my
13 understanding is to tell the truth up here.

14 Q. Okay. And what I'm asking -- well, I'm asking you if --
15 about your understanding of what happens afterwards. If the
16 Government declines to make that motion, can anybody force them
17 to make that motion?

18 A. I wouldn't know.

19 Q. You read this document before you signed it, Ms. Yip?

20 A. Yes.

21 MR. WIDMAN: Objection, Your Honor. Asked and
22 answered.

23 THE COURT: Sustained.

24 BY MR. GLUCK:

25 Q. Let's just turn to Page 10, please, Paragraph D, and this

1 paragraph -- do you see where it says, "At this time, the USAO
2 makes no agreement or representation as to whether any
3 cooperation that defendant has provided or intends to provide
4 constitutes substantial assistance." Do you see that?

5 A. Yes.

6 Q. So is it your understanding that the Government hasn't made
7 up it's -- well, is it your understanding, Ms. Yip, that there
8 has been no representation to you that the Government has made
9 up its mind already about whether you provided substantial
10 assistance?

11 A. Rephrase it, please.

12 Q. I'm sorry. Let me ask you this. Do you understand that
13 the Government may decide not to make this motion for
14 substantial assistance?

15 MR. WIDMAN: Objection, Your Honor. Lack of
16 foundation.

17 THE COURT: Sustained.

18 BY MR. GLUCK:

19 Q. Let me try -- let me start again.

20 Ms. Yip, you're hoping that when it comes to
21 sentencing, the Government will make a motion asking the Court
22 to sentence you at a lower range; isn't that correct?

23 A. I am hoping that, yes.

24 Q. You understand that whether or not they make that motion
25 depends in part on whether you provide them with substantial

1 assistance; correct?

2 A. That is correct.

3 Q. And you also understand that they haven't told you yet
4 whether they think you have done so?

5 A. I'm not understanding your question.

6 Q. Ms. Yip, is that issue still up in the air as to whether
7 you have provided substantial assistance?

8 A. All I know, sir, is I come here and I have to, under oath,
9 answer questions truthfully.

10 Q. But you're also hoping that your answers to the questions
11 will cause the Government to make that motion; right?

12 MR. WIDMAN: Objection, Your Honor. Asked and
13 answered.

14 THE COURT: Sustained.

15 BY MR. GLUCK:

16 Q. Ms. Yip, you -- well, you said your obligation is to answer
17 all questions truthfully; correct?

18 A. Correct.

19 Q. And you've done so?

20 A. Yes.

21 Q. Did Dr. Patwardhan ever tell you to not -- let me take you
22 back to the Philippines, the medicine you brought from the
23 Philippines in April 2008. We discussed that this morning.

24 You discussed the fact that you didn't declare it on
25 your customs form?

1 A. That's correct.

2 Q. Did Dr. Patwardhan tell you not to declare it on your
3 customs form?

4 A. No.

5 Q. He did not say that to you?

6 A. He did not say that to me.

7 Q. Did Dr. Patwardhan tell you where -- where to carry the
8 medicine in your suitcase or in your pocket or anything like
9 that?

10 A. He did not.

11 Q. Ms. Yip, how much was the medicine -- well, you brought it
12 back; correct?

13 A. I brought it from the Philippines back to the
14 United States, yes.

15 Q. And eventually you gave it to Jessica Young; correct?

16 A. I gave it to Jessica. I was told to give it to Jessica
17 Young, yes.

18 Q. And you did so?

19 A. I did not hand it to Jessica Young. I handed it to a
20 medical -- an office manager that was working with us at that
21 time, with the understanding that she will give it to Jessica
22 Young.

23 Q. What was the name of that office manager?

24 A. I believe her name is Mary Lou.

25 Q. Do you recall her last name?

1 A. No.

2 Q. But you gave it to her and gave her some kind of
3 instruction to give it to Jessica?

4 A. Yes.

5 Q. At some point you got reimbursed for the cost of the
6 medicine; is that right?

7 A. That's correct.

8 Q. Is it correct that the total reimbursement was somewhere
9 around -- somewhere around 600 or \$650?

10 A. Somewhere around \$600, that's correct.

11 Q. You did not get reimbursed for your plane ticket, did you?

12 A. To the Philippines, no.

13 MR. GLUCK: May I have just a moment, Your Honor?

14 THE COURT: Certainly.

15 BY MR. GLUCK:

16 Q. When you came into the country on April -- I don't remember
17 the exact date, but in April 2008 when you brought the medicine
18 from the Philippines, were you subject to a secondary inspection
19 at customs? Let me ask it a different way.

20 When you came into the country in April of 2008 from
21 the Philippines, did a customs officer take you to the side and
22 look through your baggage?

23 A. My baggage? No.

24 Q. You just walked through, gave them that piece of paper we
25 have seen --

1 A. My hand-carry, yes.

2 Q. Do you have an understanding as to whether the Government
3 is currently satisfied with your testimony?

4 A. I don't know.

5 MR. GLUCK: May I have just a moment, Your Honor? I
6 think I may be finished.

7 THE COURT: You may.

8 BY MR. GLUCK:

9 Q. You testified earlier -- Mr. Widman asked you about the
10 trip -- you know, Your Honor, I'm finished. I have no further
11 questions.

12 THE COURT: Redirect examination?

13 MR. WIDMAN: The United States has no further
14 questions for this witness.

15 THE COURT: Thank you. You may step down. And the
16 Government may call its next witness.

17 MR. BEHNKE: Excuse me, Your Honor. The Government
18 calls Sylvia Thomas.

19 THE CLERK: Please raise your right hand.

20 Sylvia Thomas, Government's witness, was sworn

21 THE CLERK: Please be seated. Right there, please.
22 Please state your full name and spell it for the record.

23 THE WITNESS: My full name and what?

24 THE CLERK: Spell it, please.

25 THE WITNESS: Sylvia Ann Thomas. S-Y-L-V-I-A, A-N-N,

1 T-H-O-M-A-S.

2 THE COURT: Thank you. You may proceed.

3 DIRECT EXAMINATION

4 BY MR. BEHNKE:

5 Q. Ma'am, by whom are you employed?

6 A. I'm employed by the U.S. Food and Drug Administration.

7 Q. What is your position with the FDA?

8 A. I'm a Supervisory Consumer Safety Officer.

9 Q. Where do you work?

10 A. I work at the Los Angeles Airport office of the FDA.

11 Q. And what are the duties that you have in your position?

12 A. My job is to monitor products that enter the United States
13 via LAX, and we screen FDA regulated products to make certain
14 that they meet U.S. Health and Safety Standards.

15 Q. How long have you held that position with the FDA?

16 A. Supervising?

17 Q. Yes.

18 A. Five years.

19 Q. And prior to attaining your supervisory position, what did
20 you do?

21 A. I was a Consumer Safety Officer.

22 Q. Where did you work as a Consumer Safety Officer?

23 A. At the Los Angeles Harbor, dealing with ocean freight.

24 Q. So for the last five years, have you been at LAX as a
25 supervisor?

1 A. Yes.

2 Q. Now, do you have other inspection officers that work under
3 you at LAX?

4 A. Yes. I supervise 12 Consumer Safety Officers.

5 Q. Now, do the inspection officers who work under you and
6 yourself, for that matter, have any interaction with Customs
7 agents that work at Los Angeles International Airport?

8 A. Yes. We have daily interaction with U.S. Customs.

9 Q. Is there a system in place whereby Customs inspectors who
10 are inspecting passengers entering through Los Angeles
11 International Airport may be referred to FDA for drug-related
12 matters?

13 A. Yes.

14 Q. How does that work?

15 A. Usually a customs agent will contact us and let us know
16 about the shipment.

17 Q. So if a customs inspector working the terminal at
18 Los Angeles encounters a passenger with drugs in their
19 possession, there's a mechanism where the Customs inspector
20 could make a referral to FDA?

21 A. Correct.

22 Q. And that would come to your office?

23 A. Yes.

24 Q. If a Customs official working the terminal encounters a
25 passenger with drugs and they make a referral to FDA, would you

1 or one of your inspectors make contact and deal directly with
2 the passenger there at the terminal?

3 A. No.

4 Q. How does that work?

5 A. What we will do is I will assign an investigator to go out
6 to the location where the product is being held by U.S. Customs
7 and then they would collect evidence and photographs labeling
8 and assess the shipment.

9 Q. Now, what do you mean when you say Customs holds the
10 product?

11 A. Usually when Customs is holding it, stops a shipment of
12 drugs like this, they would hold them in U.S. Customs' custody,
13 and the passenger would continue, and we would deal directly
14 with the shipment.

15 Q. Do you -- where would they actually hold the drugs?

16 A. Various locations around the airport. Usually some kind of
17 warehouse facility that has a Customs bonds.

18 Q. So the passenger would have to post a bond and leave the --
19 leave the drugs -- leave the drugs with Customs?

20 A. I'm not certain of the exact -- I'm not certain about the
21 procedures that Customs uses with the passenger.

22 Q. All right. But Customs in some fashion would retain the
23 drugs, and then you or one of your inspectors would go out and
24 check out the drugs?

25 A. Correct.

1 Q. Now, when you refer to shipment, would this procedure also
2 apply if we're talking about drugs that a passenger is bringing
3 in in their luggage?

4 A. Correct.

5 Q. Now, once -- once a referral is made to your office that
6 Customs has encountered a shipment of drugs, is one of the
7 factors that you and your inspectors look for to determine
8 whether to allow the drugs into the country or not whether those
9 drugs have been approved by the FDA?

10 A. Correct. If they are approved by the FDA, we will not
11 allow them to proceed.

12 Q. What happens to drugs that are not approved by the FDA?

13 A. If -- when we go out and examine a shipment, we find that
14 the drugs appear to be unapproved, what we do is request a
15 formal entry of the importer so they make a formal declaration,
16 and then we will pass our case with all of the evidence we've
17 collected to a Compliance Officer, and that Compliance Officer
18 will detain the product which allows the importer an
19 opportunity -- it opens a hearing period where the importer has
20 an opportunity to prove to the FDA that the products are
21 approved.

22 Q. When you say you require a formal entry, what do you mean
23 by that?

24 A. It means that they have to post a bond with U.S. Customs
25 and hire a customhouse broker and make a formal declaration.

1 Q. When you say the importer, are you referring to the
2 passenger?

3 A. Yes. The individual that is causing the product to move
4 into the country.

5 Q. I believe you also used a term customhouse broker. What do
6 you mean by that?

7 A. Those are specially licensed firms that interface with the
8 U.S. government. Basically they interface between an importer
9 and the U.S. government to make sure that all the applicable
10 laws are -- and all the information the U.S. government needs is
11 provided.

12 MR. BEHNKE: May I have one moment, Your Honor?

13 THE COURT: Yes.

14 (Government counsel confer off the record)

15 MR. BEHNKE: Thank you, Your Honor. Nothing further.

16 THE COURT: Thank you. Cross-examination?

17 MS. RHEE: Your Honor, may I approach?

18 THE COURT: Approach to hand documents, you mean?

19 MS. RHEE: Yes.

20 THE COURT: Yes, you may.

21 MR. GLUCK: Judicial notice.

22 THE COURT: Well, hand what it is you wish the Court
23 to take judicial notice to your opponent and then to the clerk.

24 (Sidebar conference commenced.)

25 MS. RHEE: We have brought this up before. It has the

1 URL on it and please just let us now how you would like us to
2 proceed.

3 THE COURT: Okay. Can I have a copy for me?

4 MS. RHEE: Yes, of course.

5 THE COURT: What is the Government's position?

6 MR. BEHNKE: In terms of the policy itself and the
7 foundational issues, the Government doesn't have any issue. The
8 Government's only objection to this is relevance. This is a
9 policy that is very specific, relates only to the importation of
10 small quantities of drugs for personal use by the person
11 bringing the drug in. I think there is also references in the
12 document to limitations to situations where drugs that are not
13 available in the United States for serious conditions, no more
14 than a three-month supply of drugs, and again at the end of the
15 day, what this pertains to is policies that the FDA has in place
16 for drugs for personal use.

17 There is no evidence in this case of any shipments of
18 drugs that came through LAX were for personal use.

19 THE COURT: I don't really see the relevance.

20 MS. RHEE: Your Honor, we have gone over this multiple
21 times, but, for example, in the policy itself, it specifically
22 states it generally does not represent more than a three-month
23 supply, but as the document sets forth only guidance, it is not
24 a requirement --

25 THE COURT: It's still a requirement for personal use.

1 The three-month limitation relates to a personal use limitation. 00:

2 MS. RHEE: Right. Your Honor, our argument is that 00:
3 personal use is interpreted in various different ways. It could 00:
4 be interpreted in a different way in this case. For example, on 00:
5 the Customs form itself, it defines as commercial use anything 00:
6 that is not for personal use. So technically even Ms. Yip 00:
7 bringing home gifts could constitute commercial use. 00:

8 So our argument really is that personal use, 00:
9 commercial use in this context have very, you know -- they are 00:
10 terms of art -- 00:

11 MR. GLUCK: May -- 00:

12 THE COURT: Only one of you gets to argue. 00:

13 MR. GLUCK: I'm sorry. 00:

14 MS. RHEE: May I consult with him? 00:

15 THE COURT: Not at the sidebar, not with this limited 00:
16 amount of time. I am going to sustain the objection. In any 00:
17 event, the policy on the face of it and I think really the 00:
18 Court's -- the Court will sustain the objection just based on 00:
19 the relevancy issue because -- 00:

20 MS. RHEE: Your Honor -- 00:

21 THE COURT: I am not persuaded by the distinction 00:
22 that -- the argument you are making trying to raise a 00:
23 distinction between personal use and commercial use, but even on 00:
24 the first page of the document -- 00:

25 MS. RHEE: Your Honor, it says that all of these are 00:

1 just discretionary factors. It says that they are not meant to
2 be binding.

3 MS. RHEE: It specifically says the factors noted in
4 the guidance are not mandatory requirements. They are intended
5 to guide.

6 THE COURT: It also says this guidance document is not
7 a license for individuals to import unapproved and therefore
8 illegal drugs for personal use into the U.S. It even --

9 MS. RHEE: But --

10 THE COURT: Let me finish. Even if all the factors
11 noted in the guidance are present, the drugs remain illegal and
12 the FDA may decide that such drugs should be refused to enter.
13 This is clearly a policy that relates to personal use. The
14 objection is sustained.

15 (Sidebar conference ended.)

16 MS. RHEE: May I have a minute, Your Honor?

17 (Defense counsel confer off the record)

18 CROSS-EXAMINATION

19 BY MS. RHEE:

20 Q. Good afternoon, Ms. Thomas.

21 A. Hello.

22 Q. You are the supervisor of the FDA office at Los Angeles
23 International Airport; is that correct?

24 A. Yes.

25 Q. And when you were testifying earlier, you stated that you

1 and the officers below you interact daily with Customs; is that
2 correct?

3 A. Yes.

4 Q. But by that, you -- what did you mean by that?

5 A. I mean that throughout the airport operations area, we have
6 constant contact with Customs either on the phone or in certain
7 other facilities where we work side by side with them.

8 Q. But by that you didn't mean that the FDA agents who work in
9 your particular office go to the passenger terminal on a daily
10 basis and screen all the passengers arriving from overseas
11 directly; correct?

12 A. No. We are not stationed at the passenger terminals.

13 Q. So to the extent that you interact with the Customs, you
14 interact with them on an as-needed basis, but it's not as though
15 you are actually at the arrival terminals screening passengers?

16 A. Not at the baggage terminals, no.

17 Q. And, in fact, the only time the FDA offices at the airport
18 get involved with passengers is when Customs chooses to make a
19 referral; is that correct?

20 A. Yes.

21 Q. So the FDA post entering warehouse procedures that you
22 testified about just now, those only kick in if and when Customs
23 makes the referral; is that correct?

24 A. Yes.

25 Q. And the same is true of the requirement that formal entry

1 be made of medicines; is that correct? That that kicks in after
2 Customs makes the referral?

3 A. Are you speaking specifically about passenger and baggage?

4 Q. Yes. I am speaking specifically about passengers arriving
5 from overseas.

6 A. We would only request -- FDA would only request a formal
7 entry after Customs has referred the shipment to us, if it is
8 only coming in through passenger or baggage.

9 Q. So, in other words, you don't require Customs to formal
10 enter any and all medicines that they might encounter when
11 they're screening -- when they are, you know, pre-screening
12 passengers; it's just the passengers that they decide to refer
13 to your office for further assessment?

14 A. We don't require Customs to do anything. They are a
15 separate agency. They do enforce our laws.

16 Q. And then with respect to the -- but the formal entry -- so
17 it's something that you request that Customs do after they have
18 made a referral?

19 A. Yes.

20 Q. Because you don't -- I believe you testified earlier it's
21 because you don't hold the passenger. You process it after
22 they've left?

23 A. Yes.

24 Q. So Customs officers are the ones who take the first cut, so
25 to speak, at determining whether medicines can come into the

1 country?

2 A. Again, are we speaking -- in what mode of transportation
3 are you discussing?

4 Q. Thank you. I'll just clarify it. All of my questions will
5 be directed at just passengers arriving from Los Angeles
6 International Airport on commercial airlines.

7 A. Passengers and baggage.

8 Q. Yes. --

9 A. They are very specific differences in how we approach
10 different modes of transportation is why I am trying to be
11 specific.

12 Q. Yes. So then all my questions will be about passengers
13 arriving from overseas with baggage, yes.

14 A. Okay.

15 Q. So should I repeat the question?

16 A. Please do.

17 Q. Of course. My question was Customs officers are the ones
18 who take the first cut at determining whether medicines they
19 encounter when dealing with passengers arriving on commercial
20 airliners with baggage -- they get to decide whether the --
21 those medicines can come into the country --

22 A. Yes.

23 Q. -- at the airport? And any medicines that Customs decides
24 at that point should come in get through without your hearing
25 about it; right?

1 A. Normally, yes.

2 Q. And that can include foreign medicines that Customs decides
3 to allow in; correct?

4 MR. BEHNKE: Objection. Calls for speculation.

5 THE COURT: Sustained.

6 MS. RHEE: May I have a minute, Your Honor?

7 THE COURT: Yes.

8 (Counsel confer off the record)

9 BY MS. RHEE:

10 Q. Are you aware that Customs allows any medicine at all to
11 enter the country?

12 A. I leave those determinations up to the Customs office
13 officials at the passenger cargo. I don't want to make any --
14 I'm not there, so I don't know exactly what is being done.

15 Q. So you're not there and if -- but if a Customs officer at
16 first blush dealing with a passenger with baggage has found
17 medicines or the passenger shows -- declares the medicines, that
18 Customs officer has discretion to examine those medicines on the
19 spot and make a determination as to whether or not they are
20 admissible; is that correct?

21 A. I -- I can't tell you what the Customs officer has
22 discretion on because I am not privy to what their -- what their
23 supervisors require of them.

24 Q. Well, with respect to the FDA requirements then, with
25 respect to whatever it is the FDA has delegated to Customs, your

1 understanding is that that gives Customs officers discretion? 00:

2 A. If delegated to Customs, yes. 00:

3 Q. But you're just saying you don't know what their 00:
4 supervisors then tell them to do with it? 00:

5 A. Correct. 00:

6 Q. Okay. But with respect to what the FDA itself requires, 00:
7 your understanding is that the FDA gives Customs officers the 00:
8 discretion to decide at the first encounter whether or not drugs 00:
9 are admissible? 00:

10 MR. BEHNKE: Objection. Asked and answered and lack 00:
11 of foundation. 00:

12 THE COURT: Sustained. 00:

13 MS. RHEE: May I have a minute, Your Honor. I think 00:
14 I'm -- 00:

15 THE COURT: You may. 00:

16 (Defense counsel confer off the record) 00:

17 MS. RHEE: Nothing further, Your Honor. 00:

18 THE COURT: Thank you. Redirect examination? 00:

19 MR. BEHNKE: No questions, Your Honor. Thank you. 00:

20 THE COURT: Thank you. You may step down and the 00:
21 Government may call its next witness. 00:

22 MR. WIDMAN: Your Honor, the next witness relates to 00:
23 the matter we discussed outside the presence of the jury during 00:
24 the morning session. 00:

25 THE COURT: Well, there were several of those. 00:

1 MR. WIDMAN: Concerning records.

2 THE COURT: What's the witness's name?

3 MR. WIDMAN: Commander Melisa Armijo.

4 THE COURT: Fine. You can approach.

5 (Sidebar conference commenced.)

6 THE COURT: I'm sorry. What I meant was there was

7 more than one subject we discussed.

8 MR. WIDMAN: I didn't want to --

9 THE COURT: I reviewed the documents. There are no --

10 there is -- I reviewed all of them as to Cuevas, Armijo and the

11 training documents. There is nothing in the personnel records

12 of either Cuevas and Armijo to -- that come within -- I think

13 everything has been turned over, but there is nothing to be

14 turned over or discovered. There is nothing that is

15 discoverable.

16 MR. GLUCK: So that's to say they never received

17 training on the FDA --

18 THE COURT: That's as to the commendations, the

19 discipline.

20 MR. GLUCK: He has worked for the government and

21 hasn't received the --

22 THE COURT: Within the -- training accommodations,

23 etc. We don't need to see all the medical exams.

24 MS. RHEE: No, absolutely.

25 THE COURT: You are not asking for it. As to the

1 basic -- the Government has received the -- with regard to the 00:
2 training, it wasn't exactly what I thought I was getting or was 00:
3 asking for. I'm not sure what I remember I told you to give me. 00:

4 MR. WIDMAN: I wrote it into an email. 00:

5 THE COURT: What I have here is what -- the training 00:
6 that Cuevas got. 00:

7 MR. WIDMAN: There is one for Ms. Armijo as well. 00:

8 THE COURT: There is? 00:

9 MR. WIDMAN: I believe so. 00:

10 THE COURT: I think I only got Cuevas. 00:

11 MR. WIDMAN: This is Armijo. I don't believe this is 00:
12 all I gave Your Honor. 00:

13 THE COURT: No. There is one other packet. That's 00:
14 right. That's right. But other than the general -- it shows 00:
15 what the training -- it shows the training classes she went to 00:
16 which are just the very basic the physical condition, the 00:
17 training about -- 00:

18 MR. WIDMAN: How -- 00:

19 THE COURT: What you are allowed to do in terms of 00:
20 carrying a weapon, things like that. Personal protection and so 00:
21 forth. How to -- how to control a subject. Whether they are 00:
22 compliant and how to control when non-compliant which I would 00:
23 like to go to someday, and the Practical Pistol Course, but I -- 00:
24 I don't think any -- it just shows that she has attended those 00:
25 basic courses. There is nothing in here that indicates any 00:

1 specific training in the areas of the importation of these
2 controlled substances. I think, if I remember correctly, that
3 that was what I wanted to be ordered turned over. I don't see
4 anything that indicates they took specialized training.

5 MR. GLUCK: That's correct as far as Armijo goes. I
6 should point out I'm not sure how long Agent Armijo is going to
7 be on the stand, but I was told that cross of Armijo was not
8 going to be today.

9 THE COURT: It looks like it might. Do you have any
10 other witnesses today?

11 MR. WIDMAN: No. But it's going to be a lengthy
12 witness.

13 MR. GLUCK: I was up at 3:00 this morning. I just
14 went to sleep.

15 THE COURT: Your not prepared to --

16 MR. GLUCK: I am not prepared to cross Agent Armijo
17 this afternoon.

18 THE COURT: You don't have any other witnesses here
19 today?

20 MR. WIDMAN: Ms. Armijo is a substantial witness, and
21 I think it will take some time.

22 THE COURT: All right. I won't let you or make you do
23 your cross today.

24 MR. GLUCK: Thank you, Your Honor.

25 (Sidebar conference ended.)

1 THE COURT: So Ms. Armijo can come in. 00:

2 MR. WIDMAN: The United States calls Commander Melisa 00:
3 Armijo. 00:

4 THE COURT: Let's put on the record that we just 00:
5 reached -- that we will have no more sidebars during the course 00:
6 of this trial so that you're not making me a liar in front of 00:
7 this jury. Remember, I told them at the beginning of this case 00:
8 we don't have sidebars. That's our last one; right? 00:

9 MR. GLUCK: Yes, Your Honor. 00:

10 THE COURT: Thank you. 00:

11 MR. WIDMAN: Yes, Your Honor. 00:

12 THE COURT: Thank you. 00:

13 MR. WIDMAN: Your Honor, may I have permission to see 00:
14 what's going on? 00:

15 (Mr. Widman leaves the courtroom) 00:

16 THE COURT: Next I am going to have to send you out to 01:
17 find your colleague. And then next will be Mr. Gluck to find 01:
18 the two prosecutors. 01:

19 THE CLERK: Stand by the court reporter, please. 01:
20 Please raise your right hand. 01:

21 Melisa Armijo, Government's witness, was sworn 01:

22 THE CLERK: Please be seated. Please state your full 01:
23 name and spell it for the record. 01:

24 THE WITNESS: Melisa, middle initial C, last name 01:
25 Armijo. M-E-L-I-S-A, middle initial C, A-R-M-I-J-O. 01:

1 THE COURT: Thank you. You may inquire. 01:

2 DIRECT EXAMINATION 01:

3 BY MR. WIDMAN: 01:

4 Q. Good afternoon. 01:

5 A. Good afternoon. 01:

6 Q. What is your title? 01:

7 A. I'm a Chief Customs and Border Protection Officer. 01:

8 Q. So it would be Chief Armijo? 01:

9 A. Yes. 01:

10 Q. I realize the suspense has been eliminated, but where are 01:
11 you employed? 01:

12 A. At Los Angeles International Airport. I am employed by 01:
13 Customs and Border Protection. 01:

14 Q. Can you please us your full time? 01:

15 A. Yes. I am officer for United States Custom and Border 01:
16 Protection. I have been doing this job for about 18 years. 01:
17 Actually this month makes 18 years. 01:

18 Q. What was your first position in Customs and Border 01:
19 Protection? 01:

20 A. For the first four years, I did clerical for what was 01:
21 formerly known as U.S. Customs, and then in 1995 I became an 01:
22 officer for U.S. Customs, and we have now merged since. After 01:
23 9/11 we are now U.S. Customs and Border Protection. So I'm a 01:
24 Chief Officer. 01:

25 Q. So what was your first position as an officer? 01:

1 A. My first position was in passenger operations at the
2 Los Angeles Airport in the Tom Bradley International Terminal.

3 Q. The Tom Bradley International Terminal. Is that the only
4 international terminal at Los Angeles International?

5 A. We have five international terminals at LAX.

6 Q. Thank you. So after -- you mentioned that you are in
7 passenger processing. What was your next position?

8 A. My next position was still within U.S. Customs. I was on
9 the Anti-Terrorism Team for the Contraband Enforcement Team at
10 Los Angeles International Airport. We inspected cargo.

11 Q. Could you tell us what cargo is or how that is defined in
12 your world?

13 A. Yes. Cargo is the commodity that comes off the aircrafts
14 and in bulk quantity, and that would be anything from clothing
15 to handbags and things like that. On a passenger aircraft
16 besides bringing passengers, they bring cargo which is the
17 merchandise.

18 Q. So if a passenger is traveling on a commercial airliner and
19 he or she has bags with him or her, would you consider that
20 cargo?

21 A. That would be personal effects for passengers.

22 Q. Thank you.

23 So you mentioned that you worked in the -- examining
24 cargo. What was your title in that role?

25 A. I was a -- a Senior Officer. That was my role.

1 Q. And what was your next position?

2 A. My next position I was a supervisor and I went back into
3 the passenger environment.

4 Q. When did you become a supervisor?

5 A. In 2003.

6 Q. And when you said you went back into, I think, you said the
7 passenger environment, what do you mean by that?

8 A. I went back to processing passengers. I moved from just
9 dealing with cargo, now we're dealing with passengers. If you
10 were are an arriving passenger into the United States, I had an
11 opportunity to determine if you needed an examination on your --
12 your personal baggage that you were bringing back or yourself.

13 Q. Were you working at any particular terminal or a variety of
14 terminals?

15 A. We were assigned to any five terminals on any given day.

16 Q. Were any of those terminals international terminals?

17 A. They are all strictly international terminals for just
18 international passengers arriving into the United States.

19 Q. Thank you.

20 What was your next position?

21 A. In 2007 I was promoted to a Chief Officer.

22 Q. What does that involve?

23 A. My current position is I am a watch commander at the
24 Los Angeles Airport. There are two of us assigned to that
25 position. On any given day, we have -- we supervise over 300

1 officers.

2 Q. And what -- the officers you supervise, what are -- could
3 you just explain a little bit more about the operation that you
4 supervise?

5 A. Yes. There are several different areas that you can be
6 assigned to on any given day. If you were an arriving passenger
7 into the United States, you would first come into an area that
8 we call primary processing. That's where you would basically
9 hand over any document that you are bringing with you. If you
10 are a U.S. citizen, you would hand over your U.S. passport, and
11 then we would process you. So that's one process of -- of the
12 area that I supervise.

13 The next process would be baggage inspection. From
14 that point we can inspect your baggage. The next process after
15 that would be an agricultural inspection. If you were selected
16 to have your baggage looked at for any type of agriculture
17 products, we would send you there.

18 Another area that we would send you to would be we
19 call it admissibility review. If we needed to determine that
20 your documents were valid if you are not a U.S. citizen, we
21 would send you back to that area.

22 And the final area would be a Counter-Terrorism Team.
23 There we interview passengers for possibilities of connection to
24 terrorism.

25 Q. Thank you.

1 Could you generally describe for the jury what's the
2 purpose of Customs and Border Protection at LAX. 01:

3 MR. GLUCK: Objection. This is not an expert witness. 01:

4 THE COURT: The objection is sustained. 01:

5 BY MR. WIDMAN: 01:

6 Q. Let's turn a little bit to the process for international 01:
7 travelers arriving at LAX. What is the first step in that 01:
8 process? 01:

9 A. I'm sorry? 01:

10 Q. What is the first step in that process? 01:

11 MR. GLUCK: Objection. Because this is not an expert, 01:
12 it needs to be narrowed. 01:

13 THE COURT: The objection is sustained. You may 01:
14 reword the question. 01:

15 MR. WIDMAN: Thank you, Your Honor. 01:

16 Q. Now, passengers arriving to the United States Customs at 01:
17 Los Angeles Airport, Los Angeles International Airport, they 01:
18 receive a declaration form on -- at some point, do they not? 01:

19 A. Every passenger receives a -- 01:

20 MR. GLUCK: Objection. Foundation. 01:

21 THE COURT: Overruled. Refrain from leading 01:
22 questions, however. 01:

23 MR. WIDMAN: Thank you, Your Honor. 01:

24 Q. I was asking about declarations. 01:

25 A. A Customs declaration is a form that's given to every 01:

1 passenger on the aircraft. If you were traveling in a family
2 and -- an example, if you are a family of four, you would only
3 be required to fill out one Customs form, and you present that
4 form when you're processed on primary along with your passport
5 or any other documents that you have to admit yourself into the
6 U.S.

7 Q. From whom do passengers receive the Customs form?

8 A. Each airlines is responsible for passing out that form to
9 the passengers on the aircraft.

10 Q. Thank you.

11 And I assume that is before or after the aircraft
12 lands?

13 A. That has to be before the aircraft lands.

14 Q. Thank you.

15 I would like to show you an exhibit which has already
16 been entered into evidence as Government's Exhibit 59, which I'm
17 now placing on the overhead projector. Agent Crawford, has this
18 been entered into evidence?

19 THE AGENT: It has.

20 BY MR. WIDMAN:

21 Q. Do you recognize this, Chief Armijo?

22 A. Yes. That's a Customs form.

23 Q. Okay. And then it says here at the bottom -- there is a
24 date on it. Do you see that?

25 A. Yes. That's the 01/04. There is currently a new version

1 of that that went out in '07.

2 Q. So what does this 01/04 refer to?

3 A. That was a valid form for that year and any year prior up
4 until '07. There is a new form.

5 Q. Okay. And I'd like you to take a look in the binders,
6 Binder No. 2 of 3 -- it may be that one that is open in front of
7 you there. I'm not sure. Yeah. That binder. If you just look
8 at the back of the binding of binder, you can figure out which
9 binder it is. The back of it. This part.

10 A. Oh, sorry. Yes. This one is 3 of 3.

11 Q. Okay. I think this should be in Exhibit 60. So I think
12 that's in No. 2. So it's not in that binder. It's in the
13 binder that is labeled on the binding 2 of 3.

14 A. Okay. You I've got No. 2.

15 Q. Please turn to Tab No. 60 which contains Exhibit No. 60.

16 A. I'm there.

17 Q. Okay. Do you recognize that?

18 A. Yes. That's the Customs form.

19 Q. Does it -- is there any difference in terms of the date of
20 the form than the one that we were just looking at?

21 A. Yes. That's the newer version which on here it's 10 of
22 '07.

23 MR. WIDMAN: The United States moves to have
24 Exhibit 60 entered into evidence.

25 THE COURT: Any objection?

1 MR. GLUCK: We would ask for the same stipulation that 01:
2 we had for Exhibit 59. In the scanning it appears that -- 01:

3 THE COURT: There is a pink line. 01:

4 MR. GLUCK: Apparent pink -- well, not on your copy. 01:
5 Something is highlighted. 01:

6 MR. WIDMAN: To the extent there is any pink line 01:
7 underneath that portion that says "residence," the Government 01:
8 and defendant stipulate that no such line appears on the 01:
9 original form. 01:

10 THE COURT: All right. With that stipulation and 01:
11 understanding, ladies and gentlemen -- Exhibit 62 is it? 01:

12 MR. WIDMAN: 60, Your Honor. 01:

13 THE COURT: -- is ordered admitted and you may 01:
14 publish. 01:

15 MR. WIDMAN: Thank you. 01:

16 (Government's Exhibit 60 was received.) 01:

17 BY MR. WIDMAN: 01:

18 Q. Can you please explain to the jury the significance of this 01:
19 number down at the bottom. 01:

20 A. CBP Form 6059B -- the CBP is for Customs and Border 01:
21 Protection, and our form number is 6059, B which refers to the 01:
22 Customs declaration, and the date 10/07 that is the current form 01:
23 that the airlines have to give to the passengers while they are 01:
24 on board the aircraft prior to entering our facility. 01:

25 Q. Thank you. 01:

1 Now, let's take a look at the form. I'll use this one 01:
2 because it doesn't have the pink line. Let's take a look at 01:
3 this portion of the form concerning -- I will let you tell us 01:
4 what it's concerning. 01:

5 Starting on Lines 10 to 14, can you tell us what 01:
6 these -- what these involve? 01:

7 MR. GLUCK: Objection, Your Honor. This is not an 01:
8 expert, and her understanding is irrelevant. 01:

9 THE COURT: The objection is sustained. 01:

10 BY MR. WIDMAN: 01:

11 Q. I'd like you to take a look at No. 14. I have or we have 01:
12 commercial merchandise, articles for sale, samples used for 01:
13 soliciting orders or goods that are not considered personal 01:
14 effects, and then to the right you see "yes" or "no." What 01:
15 happens if someone checks a "yes"? 01:

16 A. If a "yes" is checked on that, if you're saying you have 01:
17 commercial merchandise, a lot of times we'll have people that 01:
18 are a businessman that is bringing back a lot of times -- an 01:
19 example that I will use will be shoes. If someone is bringing 01:
20 back shoes, there is a law that if you are bringing more than 01:
21 \$2,000 of shoes, that's considered a commercial shipment, but 01:
22 you can also bring a commercial shipment in for under \$2,000 of 01:
23 any type of commercial merchandise, but you would consider it 01:
24 commercial. 01:

25 So at this point, if this -- if somebody was bringing 01:

1 shoes in, it would have to be -- you would only be allowed to 01:
2 bring in one type of shoe, and it would have to have a hole in 01:
3 it, and we would consider it commercial. And it can be any type 01:
4 of commodity. 01:

5 Another example would be if you -- you were a jeweler 01:
6 and you brought in gems, then you were bringing gems back for 01:
7 business, that would be considered commercial. 01:

8 Q. Thank you. 01:

9 Turning now to this portion here No. 15, residence, 01:
10 the total value of all goods, so on and so forth that I or we 01:
11 have acquired or brought and are bringing to the U.S., and then 01:
12 there is a dollar figure and a blank space. Now, what is the 01:
13 significance if someone -- what is the significance of the 01:
14 number that is listed there to the declarations process? 01:

15 MR. GLUCK: Same objection as earlier. 01:

16 THE COURT: To the -- the objection is sustained to 01:
17 the question in the -- the objection is sustained. 01:

18 BY MR. WIDMAN: 01:

19 Q. Can I ask you this. What are passengers supposed to write 01:
20 there? 01:

21 MR. GLUCK: Objection. Same objection. Percipient 01:
22 witness. 01:

23 THE COURT: The objection is sustained. 01:

24 BY MR. WIDMAN: 01:

25 Q. What happens if a passenger enters something there, a value 01:

1 greater than \$2,000?

2 MR. GLUCK: Same objection. Calls for speculation.

3 THE COURT: Overruled.

4 MR. WIDMAN: Well, do you know -- excuse me,
5 Your Honor.

6 Q. Do you know what happens if a passenger lists a declaration
7 \$2,000 or greater?

8 A. Yes. Then we would consider that higher than just the
9 commercial value that you can carry as a passenger into the
10 passenger environment, and from that point, we would ask you to
11 get -- to post enter it, get an informal type entry or a formal
12 entry for that based on the value of the goods that you are
13 bringing back in.

14 Q. You said post enter. What did you mean by that?

15 A. Because you would need a broker to clear your shipment
16 based under laws for Customs and Border Protection. The 2,000
17 now is that considered a commercial shipment, so it's not the
18 value that you can bring into a passenger not environment. So
19 that would be more of a type of shipment that you were bringing
20 in on an aircraft for cargo.

21 So we would post enter that for the airlines. That
22 means the airlines is responsible for bonding whatever you were
23 bringing in with you that day as far as merchandise. Not your
24 personal effects, but the stuff that we're considering the
25 commercial merchandise, and the airlines would come over, we

1 would fill out a form, they would take your information down as 01:
2 far as you name and your address, and the airlines would be 01:
3 responsible for taking your shipment and holding it in their 01:
4 warehouse until you actually obtained a broker to help you clear 01:
5 that, or in some cases you can clear that yourself with the help 01:
6 of a Customs agent. 01:

7 Q. Thank you, Chief Armijo. 01:

8 There is a lot of terminology that you used there. I 01:
9 am going to ask you to explain a couple of the terms you used. 01:
10 You used the phrase "post entered." What did you mean by that? 01:

11 A. That we're -- we're entering your goods after the fact of 01:
12 you arriving in. So it's being held. That's just the name of 01:
13 the form. It's called a post entry. 01:

14 Q. It means the passenger already left the airport, but 01:
15 whatever they were trying to bring across is still there? 01:

16 A. Yeah. It would no longer stay with us in the passenger 01:
17 environment. We would turn it over to the airlines that brought 01:
18 you into the U.S. 01:

19 Q. But the passenger leaves the airport without his or her -- 01:

20 A. Merchandise. 01:

21 Q. -- merchandise. And you mentioned a broker. What did you 01:
22 mean by that? 01:

23 A. There are Customs brokers that you can obtain to help you 01:
24 facilitate your cargo shipments through U.S. Customs and based 01:
25 on an entry that they have to file. 01:

1 Q. Thank you.

2 Now, based on your experience working at Los Angeles
3 International Bradley Terminal, do you know whether passengers
4 are required to complete this form?

5 MR. GLUCK: Objection. Same objection as earlier.

6 THE COURT: The objection is overruled.

7 BY MR. WIDMAN:

8 Q. Now, you told us about your experience working at
9 Los Angeles International Airport, did you not?

10 A. Yes.

11 Q. Do you know, based on that experience, whether or not
12 passengers are required to complete a declarations form?

13 A. Your first process is you would see a primary officer, and
14 the forms -- and the documents that you should have when you see
15 a primary officer is your passport and your Customs form. If
16 you do not have a Customs form, we send you back over to the
17 airlines to assist you to help you fill out this form. If you
18 don't have one in your possession, then we have some that are
19 available in our area for you to fill out.

20 THE COURT: All right. Just a moment.

21 MR. GLUCK: Objection to the narrative, Your Honor.
22 The non-responsive and --

23 THE COURT: The objection is sustained because the
24 question -- actually the witness's answer was not responsive to
25 the question about the declaration form.

1 MR. WIDMAN: Thank you, Your Honor.

2 Q. Chief Armijo, my question is do passengers -- if a
3 passenger is coming into the country from overseas on an
4 airplane coming into Bradley Terminal or -- Bradley Terminal,
5 are they required to fill out one of these forms?

6 A. Yes.

7 Q. Is it possible that they could get through the Customs
8 system there --

9 A. No.

10 Q. -- without filling one out?

11 A. No.

12 Q. And they are required to sign the form; is that right?

13 A. Yes.

14 Q. Okay. So the passenger receives the form on the airplane.
15 Who do they give the form to?

16 MR. GLUCK: Objection. Same grounds as earlier.

17 THE COURT: The objection is overruled.

18 BY MR. WIDMAN:

19 Q. Who does -- first of all, let me ask you this. Let me ask
20 that question again.

21 Who does a traveler coming in give that form to?

22 A. That form is seen by several processes through the -- the
23 international airport that you're in, so the first officer that
24 would see it would be the primary officer and the last officer
25 to see that would be the officer at the exit point prior to

1 departing the Federal Inspection Area.

2 Q. Thank you.

3 And just for purposes of clarification, I realize I
4 refer repeatedly to Bradley Terminal at LAX. These procedures
5 regarding Customs and what -- your testimony, does it apply to
6 only Bradley Terminal or does it apply to the other
7 international terminals at LAX Angeles Airport?

8 A. It would apply to all five terminals at Los Angeles
9 Airport, international airport in our facility.

10 Q. Does your supervisory responsibility extend only to Bradley
11 or does it extend to other international airports at LAX?

12 A. I am responsible for all five terminals.

13 Q. Thank you.

14 Now, you mentioned the first person that the passenger
15 gives the form to. Who was that?

16 A. That's the primary officer.

17 Q. Where does the passenger see the primary officer?

18 A. That's the first officer they will encounter into the
19 Federal Inspection Area.

20 Q. Okay. I would like to show you a few pictures and ask you
21 a few questions about them.

22 A. Yes.

23 Q. I'd like you to look into the very first binder of 3.

24 Exhibit 61. Excuse me. I am told that it's actually Binder 2.

25 Can you take a look at Exhibits 61-A through 61-T. Just briefly

1 look them over and familiarize yourself with them. 01:

2 A. I've looked them over. 01:

3 Q. Okay. Do they appear to be locations just outside and 01:
4 inside of Los Angeles -- LAX's Bradley Terminal? 01:

5 A. Yes. 01:

6 Q. Do they fairly and accurately represent what they purport 01:
7 to represent? 01:

8 A. Yes. 01:

9 Q. Thank you. 01:

10 Your Honor, the United States moves to have Exhibits 01:
11 61-A through 61-T entered into evidence and for permission to 01:
12 publish. 01:

13 MR. GLUCK: Your Honor, to the extent these exhibits 01:
14 are going to be described and discussed by the witness, we don't 01:
15 object to any of them. To the extent they're not, we don't 01:
16 think that they ought to be just bulk admitted into evidence. 01:

17 THE COURT: Well, counsel -- well let's just solve it 01:
18 like this for the moment. Are you going to ask her some 01:
19 questions about this exhibit? 01:

20 MR. WIDMAN: Yes. I intend to ask her a question 01:
21 about each and every picture in this pile. 01:

22 MR. GLUCK: Then we have no objection. 01:

23 THE COURT: Fine. That's Exhibit -- 01:

24 MR. WIDMAN: 61-A through 61-T. For the record, I 01:
25 left out 61 plain. 01:

1 THE COURT: All right. Thank you. 61-A through T are 01:
2 ordered admitted, and you may publish. 01:

3 MR. WIDMAN: Thank you, Your Honor. 01:

4 (Government's Exhibits 61-A through 61-T were received.) 01:

5 BY MR. WIDMAN: 01:

6 Q. I am now placing on the overhead protector Exhibit 61-A. 01:

7 What is -- what does this appear to be, Chief Armijo? 01:

8 A. That's the jetway. That would be the entry or exit that is 01:
9 pulled up to the aircraft in order for you to deplane the 01:
10 aircraft. 01:

11 Q. So when a passenger gets off the airplane, they walk 01:
12 through something like this or this? 01:

13 A. Yes. 01:

14 Q. Thank you. 01:

15 And at that point, the passenger has the declaration 01:
16 form with them? 01:

17 A. Yes. 01:

18 Q. Thank you. 01:

19 I'm now placing on the overhead projector 01:
20 Exhibit 61-B. Could you please -- could you please tell the 01:
21 jury what we're looking at here. 01:

22 A. That's just another area into the Federal Inspection Area. 01:

23 Q. Is that near the jetway we were just talking about? 01:

24 A. It's after the jetway. 01:

25 Q. Thank you. 01:

1 Now turning to Exhibit 61-C, what are we looking at
2 here?

3 A. That's the corridor that will lead you into the Federal
4 Inspection Area.

5 Q. Thank you.

6 And turning now to Exhibit 61-D, could you please tell
7 us what this is.

8 A. That's the same picture that you have seen prior but with
9 passengers.

10 Q. Okay. And what is this -- what is on this sign right here?

11 A. Those are gates to where the gates are, depending on what
12 gate you block on.

13 Q. That's designed for passengers traveling in the opposite
14 direction; is that right?

15 A. No. That would be on the arrival area, but these are just
16 for all passengers arriving in. Some of the numbers for those
17 are for when our officers have to respond to the gates, they can
18 see which way to go.

19 Q. Okay. I understand. So when you said "our officers
20 respond to the gates," you mean when CBP officers -- what did
21 you mean by that?

22 MR. GLUCK: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. WIDMAN:

25 Q. I am putting this picture on -- this is 61-E like "Edward."

1 What are we looking at here?

2 A. That is signage located in the corridor prior to entering
3 the FIS area.

4 Q. When you say FIS, what do you mean?

5 A. The Federal Inspection Area.

6 Q. And is that where U.S. Customs is located, in the Federal
7 Inspection Area?

8 A. Yes.

9 Q. Let's take a look at this one now. Okay. Now, where is
10 this sign located?

11 A. We -- we have several of those signs located throughout the
12 corridors because we have gates that start from 101 on one side
13 that end to 123 on the opposite side of the Tom Bradley
14 International Terminal, so those signs are visible for
15 passengers to see basically their way to get into the Federal
16 Inspection Area.

17 Q. Thank you.

18 I'm now placing Exhibit 61-G on the overhead
19 projector. Now, is this the same sign we were just looking at?

20 A. Yes.

21 Q. And where is this sign located?

22 A. There is two in the -- on each corridor, north side and
23 south side of the Tom Bradley International Terminal.

24 Q. Thank you.

25 Okay. I'm placing Exhibit 61-H on the overhead

1 projector. And could you please explain or tell the jury what 01:
2 we are looking at here. I'm going to auto focus this. Okay. 01:
3 What are we looking at here? 01:

4 A. It's the same corridor. It's just the end of the corridor 01:
5 so you will almost be nearing the Federal Inspection Area. 01:

6 Q. Now, what is this that I'm pointing to here, the middle of 01:
7 the picture? 01:

8 A. That's more signage for passengers. 01:

9 Q. Now, is that the same exact sign we were just looking at? 01:

10 A. It's one of the same. That's an older version. 01:

11 Q. They appear in the same hallway? 01:

12 A. Yes. 01:

13 Q. The Government -- I'm placing on exhibit -- placing on the 01:
14 overhead projector Exhibit 61-I. It's a little closer look. 01:
15 Let me ask you, what is this? 01:

16 A. That's an older version of the sign because the Bradley 01:
17 Terminal has been under construction so that hasn't been updated 01:
18 to the blue version that you saw earlier. 01:

19 Q. Thank you. 01:

20 Now I'm placing Exhibit 61-J on the overhead 01:
21 projector. Is this the same sign that we were just looking at? 01:

22 A. It's the same sign, old version. 01:

23 Q. Old version. When you say old version, is this sign still 01:
24 at Los Angeles International Airport, Bradley Terminal today? 01:

25 A. I'm not sure if they finished that section of the corridor 01:

1 so it could be replaced by the blue version. 01:

2 Q. I'm now placing on the overhead projector Exhibit 61-K. 01:

3 Can you tell us what this is? 01:

4 A. It's the same sign. 01:

5 Q. That we were just looking at? 01:

6 A. Yes. 01:

7 Q. Is this the older version? 01:

8 A. That's the old version. 01:

9 Q. Okay. I'm now placing exhibit -- well, actually I'll hold
10 off on that for a moment. 01:

11 Once you get to the end of the hallway, what happens
12 next? 01:

13 A. You'll either come -- 01:

14 MR. GLUCK: Objection. Vague. 01:

15 THE COURT: Sustained. 01:

16 MR. WIDMAN: Thank you, Your Honor. 01:

17 Q. Where does the passenger go after the hallway ends? 01:

18 A. It leads to stairs or an escalator that will take you down
19 into the Federal Inspection Area. 01:

20 Q. Now, the Federal Inspection Area, are there different
21 lines, or is everyone in the same line? 01:

22 A. There are several -- there are two lines, one for U.S.
23 citizens and one for non-U.S. citizens. 01:

24 Q. Thank you. 01:

25 Now, when people stand in that line, what do they do? 01:

1 Do they do anything there, or do they just wait? 01:

2 A. That's where you get admitted into the United States. 01:

3 Q. I'm going to place on the overhead projector Exhibit 61-L. 01:

4 Could you please tell us what we're looking at here. 01:

5 A. Those are the lines that you will enter prior to seeing an 01:

6 officer before you -- before you're processed into the 01:

7 United States. 01:

8 Q. Okay. Now, is this the line, if you can tell, for U.S. -- 01:

9 for U.S. citizens or non-U.S. citizens? 01:

10 A. The signage there says U.S. citizens. 01:

11 Q. Thank you. 01:

12 And this is now Exhibit 61-M. Can you please tell us 01:

13 what we see here. 01:

14 A. That's the Federal Inspection Area and the signage area for 01:

15 U.S. citizens. 01:

16 Q. Now, would this be the first line that passengers get on 01:

17 after they get off the airplane? 01:

18 A. Yes. 01:

19 Q. And who do they -- what is the purpose of standing in that 01:

20 line? What happens at the end of the line? 01:

21 A. The end of the line is actually the beginning of the line 01:

22 for us. You'll see a primary officer where again you will be 01:

23 admitted into the United States or be referred to a secondary 01:

24 area if you are not admitted into the United States. 01:

25 Q. And are you required to present anything to the -- let me 01:

1 ask you -- strike that.

2 Do you see any CBP representative once you get to the
3 end of that line?

4 A. Yes. You will see a -- each passenger sees a CBP officer
5 to be processed into the United States. You have to produce
6 your U.S. passport, or if you are not a U.S. citizen, the
7 passport that you are bringing into the country that day, and
8 you have to have your Customs form with you. And if you are a
9 U.S. citizen, those are the only two documents you would need.
10 If you are not a U.S. citizen, you would need another form
11 called an I-94.

12 Q. Okay. For purposes of my question today, I'm focused only
13 on U.S. citizens arriving -- returning to the United States from
14 abroad. Okay?

15 A. Yes.

16 Q. Is the -- other than the declaration and the passport, is
17 the traveler ever asked to provide additional information at the
18 primary inspection point?

19 A. Yes. If their -- if their Customs form is not completely
20 filled out, they'll be asked to -- those questions that are on
21 the form, and they will be asked to complete that form prior to
22 being processed.

23 Q. And what does the primary officer do during the inspection?

24 A. He completes the initial inspection for you to be processed
25 into the United States.

1 Q. Okay. Is there any decision-making that has to be made by 01:
2 he or her -- he or she? 01:

3 A. Yes. He determines either, one, you are admitted into the 01:
4 United States from the point that he -- he or she sees you or he 01:
5 can -- he or she can refer you at that point for an inspection. 01:

6 Q. An inspection by whom? 01:

7 A. An inspection by another CBP officer. 01:

8 Q. Do you know what the word "secondary" means? 01:

9 THE COURT: Why don't we take our afternoon recess 01:
10 now. 01:

11 MR. WIDMAN: Certainly, Your Honor. 01:

12 THE COURT: Thank you. Ladies and gentlemen, we will 01:
13 take a recess for 15 minutes this afternoon until 3:15 by the 01:
14 courtroom clock. 01:

15 Remember, don't discuss the case, don't communicate 01:
16 about the case or anything having to with the case, the 01:
17 testimony of the witnesses, any of the other participants, don't 01:
18 read any reports about the case, do any research about the case, 01:
19 and don't make up your minds about the case or any issue 01:
20 involved in the case. 01:

21 Thank you. You're excused. 01:

22 (Recess taken) 01:

23 (Jury Out) 01:

24 THE COURT: You may be seated. Chief Armijo, you may 01:
25 step down. My law clerk is waiting outside or will be waiting 01:

1 outside to take your picture so make sure she gets a chance to 01:
2 do that during the recess. We're in recess. 01:

3 (Recess taken) 01:

4 (Jury In) 01:

5 THE COURT: Let the record reflect the presence of all 01:
6 members of the jury, all counsel and the witness present. You 01:
7 may continue. 01:

8 MR. WIDMAN: Thank you, Your Honor. 01:

9 Q. Chief Armijo, I believe before we took the break we were 01:
10 talking about the primary inspection point. Do you remember 01:
11 that? 01:

12 A. Yes. 01:

13 Q. Now, after the primary inspection point, the passenger goes 01:
14 to the baggage carousel; is that right? 01:

15 A. Yes. 01:

16 Q. I am placing on the overhead projector Exhibit 61-N in 01:
17 evidence. Could you please tell us what we're looking at here? 01:

18 A. Passengers waiting for their baggage. 01:

19 Q. Turning now to Exhibit 61-O, which I am placing onto the 01:
20 overhead projector, what are we looking at here? 01:

21 A. Signage located up above a baggage carousel. 01:

22 Q. Does it appear on both sides of the carousel or only one 01:
23 side? 01:

24 A. Both sides of the carousel. 01:

25 Q. Thank you. 01:

1 Where does the passenger go after the baggage
2 carousel?

3 A. They form another line to see a baggage screener, which is
4 another officer.

5 Q. What does the baggage screener do?

6 A. The baggage screener -- you'll hand your Customs form to
7 the baggage screener, and he will determined if you have
8 declared anything on that form. If you say "yes" to an
9 agriculture product, he will refer you to agriculture secondary.
10 If you say "yes" to the currency question, he'll refer you to
11 baggage secondary. If he determines that you haven't marked
12 anything on your dec, he can, one, either send you to the exit
13 or, two, he can still determine you warrant a secondary exam.

14 Q. You mentioned dec. What did you mean by that?

15 A. I'm sorry. Customs form.

16 Q. Is "dec" short for "declaration"?

17 A. Declaration, correct.

18 Q. Now, aside from the information on the secondary, does the
19 officer have -- can the officer send them on their own
20 initiative somewhere to one of the secondaries?

21 A. Yes.

22 Q. What would make an officer do that?

23 MR. GLUCK: Objection. Not an expert witness.

24 THE COURT: The objection is overruled. The question
25 calls for the witness to state what her experience is in this

1 regard, or I am going to construe it that way and you should 01:
2 construe, unless you are otherwise instructed, that the witness 01:
3 is testifying about what her own experiences are in her 01:
4 employment as an employee of the -- what was formerly the U.S. 01:
5 Customs Service and now the Customs and Border Protection 01:
6 Agency. 01:

7 BY MR. WIDMAN: 01:

8 Q. In your experience, why would -- first of all, what is the 01:
9 person called at the front of this line? 01:

10 A. It's a screener. 01:

11 Q. And they -- they work for Customs and Border Protection? 02:

12 A. It's an officer. It's just another assignment that you can 02:
13 be assigned to. 02:

14 Q. Okay. Now, based on your experience, why would one of the 02:
15 screeners send someone to one of the secondary examination 02:
16 points that you mentioned? 02:

17 A. Based on my experience and actually my position as a 02:
18 screener, before I would refer somebody to a secondary 02:
19 examination, one, if you're coming from a country known for 02:
20 maybe narcotics, I would refer you. You if you have a lot of 02:
21 travel based on looking at your -- your passport or if I am 02:
22 trying to determine if you're carrying currency more than 02:
23 \$10,000 and you're not reporting it, I would refer you for a 02:
24 secondary exam, or I can also send you to agriculture even if 02:
25 you have answered "no" to the agriculture question and I feel 02:

1 that you warrant an examination.

2 Q. What do they do at agriculture?

3 A. They look for prohibited fruits, meats, plants or
4 vegetables.

5 Q. I am going to place on the overhead projector Exhibit 61-P
6 entered into evidence already.

7 Can you please tell the jury what we are all looking
8 at here?

9 A. Sure. It's a baggage carousel, and in the stanchions where
10 the passenger is standing, from that point he is into a line
11 where he will reach the baggage screeners which are the officers
12 that are in the podiums.

13 Q. Could you please -- the screen actually is able to -- it's
14 like a touch screen so if you just touch, it you can indicate to
15 the jury where your referring to the stanchions?

16 A. Sure. These are stanchions here where you will form a line
17 and the passengers will proceed on to the baggage screeners.
18 There is one on each side and there are two located on the
19 opposite side, depending on which baggage carousel you are
20 using, and the screeners will be responsible for looking at your
21 Customs form and your passport to determine if you are going to
22 either exit or if they're going to refer you to a secondary area
23 which is located where the X is.

24 Q. So when the person reaches the screening officer, they
25 have -- they already have their checked luggage; is that right?

1 A. Yes, they do.

2 Q. Turning now to Exhibit 61-Q, which I'm going to place on
3 the overhead projector -- by the way, Chief Armijo in order to
4 clear those pink marks -- there you go.

5 A. Sorry.

6 Q. Now taking a look at Exhibit 61-Q, could you please tell us
7 what this picture depicts.

8 A. This is the picture just from the opposite angle. These
9 are the baggage screeners. You will actually see this woman
10 here is a flight attendant, and her form is being checked by the
11 baggage screeners. These two officers are both baggage
12 screeners.

13 Q. Okay. Thank you.

14 Turning to Exhibit 61-R, which I'm placing on the
15 overhead projector, what are we looking at here?

16 A. This is the exit point out of the Tom Bradley International
17 Terminal, and when those passengers exit, they have to turn in
18 their Customs form prior to exiting the facility. If you're
19 traveling by yourself, the form will say 1 on top. If you're
20 traveling with a family of 4, the 4 -- a 4 should be written on
21 the top so it means that only 4 people will be allowed to exit
22 on that one declaration.

23 Q. What's on the other side of the exit once you walk through?

24 A. It's a hall that will lead you out to the public, and your
25 family are waiting for your arrival.

1 Q. Thank you. 02:

2 Turning now to Exhibit 61-C -- excuse me. S. 61-S 02:
3 like "Sam" which I'm placing on the overhead projector, what is 02:
4 this? 02:

5 A. That's the agriculture secondary area. 02:

6 Q. Which I believe we already discussed. Ordinarily is it 02:
7 empty like this? 02:

8 A. No. 02:

9 Q. Thank you. 02:

10 Turning now to Exhibit 61-T which I'm placing on the 02:
11 overhead projector. Chief Armijo, what are we looking at here? 02:

12 A. This is the baggage secondary area where you would have 02:
13 your baggage inspected or your persons inspected. 02:

14 Q. Okay. Now, during your time with the Customs and Border 02:
15 Protections and formerly just Customs, did you ever have 02:
16 occasion to be an inspector at secondary? 02:

17 A. Yes. 02:

18 Q. Baggage secondary? 02:

19 A. Yes. 02:

20 Q. During that time if a passenger was coming up to you, what 02:
21 would happen? 02:

22 A. I would ask them for their passport and their Customs form. 02:
23 You should always obtain those two documents, and then I would 02:
24 get what I -- what you call an oral declaration. It's just a 02:
25 repeat of the questions that are on your Customs declaration. 02:

1 Q. What do you mean? Can you explain what you mean by the
2 oral declaration?

3 A. Yes. First you want to obtain ownership of the passenger's
4 luggage. The first question I would ask is, "Do these bags
5 belong to you?" The next question is, "Are you carrying
6 anything for anybody else today? Do you have any plants,
7 fruits, meats or vegetables with you?" You want to obtain the
8 agriculture question. You want to ask the currency question.
9 "Are you carrying more than \$10,000 with you?" And the other
10 question would be, "Are all the goods you're bringing in
11 today -- belong to you and are they over \$800?"

12 MR. GLUCK: Objection on relevance as to this
13 particular witness and her experience.

14 THE COURT: Well, what's the relevance as to the
15 agriculture section?

16 MR. WIDMAN: The agriculture section mostly is just to
17 distinguish it from the baggage section. It's not centrally
18 relevant.

19 THE COURT: The objection is otherwise overruled.

20 MR. WIDMAN: I'm sorry?

21 THE COURT: The objection is overruled.

22 MR. WIDMAN: Thank you.

23 THE COURT: The witness's answer may stand.

24 MR. WIDMAN: Thank you.

25 Q. Had you completed your answer, Chief Armijo?

1 A. Yes.

2 Q. Now, when you were conducting your secondary inspections,
3 did you rely on what the passenger was telling you?

4 A. No.

5 Q. How do you mean?

6 A. Well, you did several things. You obtained the declaration
7 and listened to the passenger's answers, and you also observed a
8 passenger to determine if you believed that the answers they
9 were giving you were truthful. So from that point, besides
10 doing an oral interview, you also wanted to do an examination on
11 the luggage, the baggage that you're bringing in today, so we
12 would ask the passenger to open up. If you're bringing two
13 bags, open up two bags, and we would inspect all the contents
14 inside the luggage and at times even the luggage itself for any
15 kind of contraband.

16 Q. Did you always inspect all of the luggage?

17 A. Not every single time.

18 Q. Can you explain.

19 A. As an officer, it's your determination if you feel that the
20 exam is finished after opening one bag and you believe that the
21 passenger is a valid passenger and they have no prohibited
22 items, you can end your examination from there and then let the
23 passenger proceed, or you can determine if you need to open all
24 the bags, or even at that point sometimes even search a
25 passenger to see if they have any prohibited items on them.

1 Q. So how -- when you were the officer, how did you decide
2 whether to search all the bags or not?

3 MR. GLUCK: Objection. Relevance. Not an expert.

4 THE COURT: Sustained.

5 BY MR. WIDMAN:

6 Q. Now, you mentioned the formal entry before. I believe you
7 mentioned it in passing.

8 A. Yes.

9 Q. Do you remember that?

10 A. Yes.

11 Q. What did you mean by that?

12 A. A formal entry -- while you were doing an examination on a
13 passenger if you determine that in that passenger's luggage on
14 one of its baggage is actually personal belongings but on the
15 other baggage they're bringing in T-shirts but it's a commercial
16 quantity of T-shirts, then we can post enter that, and from that
17 point, depending on the value of it, it would be considered a
18 formal entry or, one, an informal entry if it's under the value
19 but it still requires you to declare it.

20 Q. And who decides whether a formal entry is necessary or not?

21 A. You decide as an officer based on what you're taught as far
22 as the laws.

23 Q. What -- when you were an officer, what did you do to
24 determine the value of items that were presented to you at
25 secondary?

1 MR. GLUCK: Same objection. 02:

2 THE COURT: The objection is overruled. 02:

3 BY MR. WIDMAN: 02:

4 Q. When you were an officer conducting secondary inspections, 02:
5 how would you determine the value of items in the passenger's 02:
6 possession? 02:

7 A. Based on my experience, my training, I would determine the 02:
8 value is two hundred -- \$2,000 limit for commercial merchandise. 02:
9 If it's under 2,000, you can clear it in your -- there on the 02:
10 spot. If it's more, then it would require for you to post enter 02:
11 it. 02:

12 Q. Did you ever ask for any documentation? 02:

13 A. Yes. You would actually ask for any type of invoices that 02:
14 the passenger had in -- and if doing your inspection you 02:
15 discovered any invoices, you can also use those if it matched 02:
16 the merchandise that you were bringing in for that day. 02:

17 Q. Now, you mentioned the formal entry. What did you do when 02:
18 you decided a formal entry was necessary? 02:

19 MR. GLUCK: Same objection. And relevance. 02:

20 THE COURT: Well, Mr. Widman, what's the relevance -- 02:
21 what are you offering this witness's testimony and experience -- 02:
22 for what purpose since she has not been designated to give 02:
23 opinion testimony. 02:

24 MR. WIDMAN: It's to familiarize the jury with this 02:
25 process, and so they -- I would be happy to explain it in 02:

1 further detail at a sidebar, if the Court would want. 02:

2 THE COURT: You didn't designate her as an expert. 02:

3 MR. WIDMAN: That's true, Your Honor. We believe that 02:
4 her experiences are relevant as a factual matter to the issues 02:
5 in this case. 02:

6 THE COURT: The objection is overruled. 02:

7 Do you remember what the last question was? 02:

8 THE WITNESS: No. 02:

9 THE COURT: Would you ask the question again. 02:

10 MR. WIDMAN: Yes, Your Honor. 02:

11 Q. I believe the question was if you decide -- if, in your 02:
12 experience, you decided that the -- a formal entry was required, 02:
13 what would you do? 02:

14 A. If a formal entry was required, we would ask the passenger 02:
15 to separate their personal belongings from the commercial 02:
16 merchandise, and we'd call over the airlines to bring their 02:
17 form. It's called a post entry form, and the airlines would be 02:
18 responsible for obtaining information from the passenger as far 02:
19 as a valid address and telephone number. From that point the 02:
20 airlines would take possession of the commodity, and they would 02:
21 post enter it into their warehouse. 02:

22 Q. In your experience as an officer, if you found items that 02:
23 the passenger did not declare but should have, would you provide 02:
24 any guidance? 02:

25 MR. GLUCK: Same objection, Your Honor. It's a 02:

1 percipient witness.

2 THE COURT: You may have a standing objection.

3 MR. GLUCK: Thank you.

4 THE COURT: Thank you. The objection is overruled.

5 BY MR. WIDMAN:

6 Q. My question, Chief Armijo, was based on your experience
7 conducting secondary examinations of baggage, if you discovered
8 that the passenger didn't declare something that he or she had
9 acquired abroad, would you provide any guidance regarding that
10 issue?

11 A. Yes. If it was a prohibited type item -- for example, I
12 have seized narcotics based on being prohibited and not being
13 declared. I have seized merchandise, counterfeit merchandise.
14 If you were bringing in a counterfeit purse that was a Gucci
15 purse and you were bringing more than three of them, we can
16 seize them.

17 You couldn't bring in counterfeit merchandise based on
18 trademark violations. We have seized -- not seized prescription
19 drugs, but we have actually had prescription drugs. Codeine is
20 a big commodity that comes in that we either seize or turn over
21 to another agency.

22 Q. Thank you.

23 Based on your experience, does the officer have the
24 ability to indicate in the system that the person should be
25 subjected to baggage secondary in the future?

1 A. Yes.

2 Q. And what kind of record -- what do you call that record if
3 there is such -- if there is a name for it?

4 A. We call it a TECS record. Treasury Enforcement
5 Communications Systems Record.

6 Q. That actually segues into the next topic that I wanted to
7 discuss with you which concerns record keeping at Customs and
8 Border Protection at the international terminals that you
9 supervise.

10 You mention the TECS. System Treasury -- I'm sorry.
11 What does TECS mean again?

12 A. Treasury Enforcement Communications Systems.

13 Q. Okay. Now what is that? What is TECS?

14 A. TECS is a variation of several different systems. First
15 example would be if you're coming in and you're a passenger on
16 the airlines, I can go into the system and look at every
17 passenger that's coming in to the international terminal for
18 that day so that's one system.

19 Another system would be if you warranted a secondary
20 exam, I can check that system to see if you have any other prior
21 exams.

22 Q. Okay. Now, with respect to the declaration forms which we
23 were looking at the blank forms before, how long does Customs
24 and Border Protection at the airport retain those records after
25 the passenger has completed their travel?

1 A. Three years.

2 Q. Where -- where are they ordinarily kept?

3 A. The -- we keep our records at each -- at five -- five
4 international terminals that we have. We keep them there, and
5 if after a few months it's too many boxes, we keep them in a
6 cold storage area in the Tom Bradley International area.

7 Q. The declarations are kept in a cold storage area?

8 A. Yes.

9 Q. Now, if a duty is levied on a passenger, how long -- how
10 long is the passenger's declaration kept?

11 A. I'm not sure of the approximate time, but those are longer
12 than three years.

13 Q. How long are records of formal entries kept?

14 A. Those are kept in the system for formal entries, so those
15 can be kept for -- for longer periods of time. I can go back
16 and check something from 1999.

17 Q. Okay. So do you know of any cutoff where the records are
18 no longer available?

19 A. No.

20 Q. Now, if -- if the Customs officer detains items -- well,
21 actually -- in your experience as supervising and being an
22 officer at the international terminals at LAX, did you ever
23 encounter officials from the Food and Drug Administration?

24 A. Yes.

25 Q. In what circumstances?

1 A. Mostly for prescription medication. 02:

2 Q. Okay. Now, if an officer -- if an -- if you detained items 02:
3 for inspection by the Food and Drug Administration, FDA, would 02:
4 any record of that be retained? 02:

5 A. No. Just on paper. 02:

6 Q. Okay. When I say any record retained, I mean anything on 02:
7 paper, anything in the computer system. 02:

8 A. It can be both. If you as you -- myself as an officer, if 02:
9 I completed an examination on you, I can put remarks into a 02:
10 secondary examination record stating that I had turned over any 02:
11 commodity to any -- to any agency. It's just tracking for 02:
12 record keeping and future targeting. 02:

13 Q. Do you know of any cutoff where records regarding referrals 02:
14 to the FDA are, you know, discarded? 02:

15 A. No. 02:

16 Q. If a passenger filed a formal entry for an item and the 02:
17 item was not permitted into the country, how long would a record 02:
18 of that be maintained? 02:

19 A. That would be in the -- in the TECS system so that could be 02:
20 maintained for a long period of time. 02:

21 Q. Okay. Now that we have gotten a little of that groundwork 02:
22 out of the way, I would like to ask you a few questions about 02:
23 your involvement in investigating or learning about this case. 02:

24 Have you conducted any research into travel records in 02:
25 this case? 02:

1 A. Yes.

2 Q. What have you done?

3 A. I have actually, based on a name that was provided to me --
4 I have conducted research as far as looking at travel in and out
5 of the country. And I have also conducted secondary examination
6 records which means if you were sent to any type of secondary,
7 baggage secondary or agriculture secondary, I can pull up a
8 record to see what time you were processed and if your luggage
9 was examined and any remarks that were input by the examining
10 officer.

11 Q. Have you of ever heard of something called the Automated
12 Commercial System?

13 A. Yes.

14 Q. And what is that?

15 A. That's another system into the -- it's another system that
16 is used by us at Customs and Border Protection. When you filed
17 an entry, a formal entry, we can go into the system and track
18 your system based on a record ID number that is produced by you,
19 or if you're clearing it by your name, then -- or even a social
20 security number.

21 Q. Now, you mentioned that you did queries on different
22 people. Did you do queries on the defendant in this case,
23 Dr. Patwardhan?

24 A. Yes.

25 Q. Did you do queries on Jessica Young?

1 A. Yes.

2 Q. Velma Yip?

3 A. Yes.

4 Q. Supriya Mhaskar.

5 A. Yes.

6 Q. Thank you.

7 And in what systems have you conducted those queries?

8 A. The Treasury Enforcement Communications Systems, as well as
9 the Automated Commercial System.

10 Q. Now, in which systems are border crossings contained? In
11 which system is border crossings records contained?

12 A. That's in the Treasury Enforcement Communicates Systems.

13 Q. And records regarding searches, arrests and seizures?

14 A. Yes.

15 Q. How do you mean? I can repeat the question.

16 In which system is records regarding searches, arrests
17 and seizures maintained?

18 A. That's in the Treasury Enforcement Communications System as
19 well.

20 Q. Which system for secondary exam and information?

21 A. The Treasury Enforcement Communications Systems.

22 Q. What about commercial entries?

23 A. That would be in the Automated Commercial System.

24 Q. And have you ever heard of an query called SQAD?

25 A. Yes. That's in the Treasury Enforcement Communication

1 System.

2 Q. What is that?

3 A. That's an query on an address.

4 Q. Okay.

5 I'd like to turn to certain documentation and ask you
6 some questions about it.

7 If I could just have a moment, Your Honor.

8 THE COURT: You may.

9 BY MR. WIDMAN:

10 Q. Chief Armijo, could you please peruse in your binders
11 Exhibits 46 and 47. Okay. Now, you have looked so far -- I
12 believe I asked you to look at Exhibits 46 and 47. Have you
13 looked at those?

14 A. Yes.

15 Q. What do those appear to be -- excuse me. What is
16 Exhibit 46?

17 A. 46 are what we consider border crossings, and that would be
18 your inbound flight and your outbound flight for a passenger.

19 Q. And do these records -- does this record pertain to any
20 particular passenger?

21 A. Yes. Mr. Patwardhan.

22 Q. And are these the records that you or someone acting on
23 your behalf pulled?

24 A. Yes.

25 MR. WIDMAN: Your Honor, the United States moves to

1 have Exhibit 46 entered into evidence. 02:

2 THE COURT: Any objection to Exhibit 46? 02:

3 MR. GLUCK: None, Your Honor. 02:

4 THE COURT: 46 is ordered admitted. You may publish. 02:

5 MR. WIDMAN: Thank you, Your Honor. 02:

6 (Government's Exhibit 46 was received.) 02:

7 BY MR. WIDMAN: 02:

8 Q. This exhibit is actually like 7 pages long, for the record. 02:

9 Actually 8 pages. 02:

10 Looking at the first sheet here, can you please 02:
11 explain what we are all looking at here. 02:

12 A. Yes. Again it says -- where it says crossing line, those 02:
13 are what we call border crossings, and then it has this -- the 02:
14 name of the passenger, and then it will go down to date of 02:
15 birth, and then below is a time frame of the request made for 02:
16 the crossings. 02:

17 Q. Do you recall who made this request? 02:

18 A. Yes. 02:

19 Q. Who was that? 02:

20 A. Agent Fernandez. 02:

21 Q. Do you know what agency Agent Fernandez is employed with? 02:

22 A. Yes. He is with ICE, Immigration and Customs Enforcement. 02:

23 Q. Thank you. 02:

24 Turning to Page 1, Bates stamped 2688, can you -- 02:

25 there is a lot of information apparently on this form. Can you 02:

1 try to explain to the jury what these different codes and what 02:
2 this information means, maybe starting here with the top one. 02:

3 A. Yes. Again, it's the passenger's name. Below it the 02:
4 5/26/08 would be the date of travel. Sorry. I'll try to point. 02:
5 Right here, that's what they consider a location code. Right 02:
6 here Montreal. If you look at the "I" right here, that's 02:
7 relative because that's an inbound flight. So -- and then this 02:
8 part here says inbound to LAX coming from UYL so that's in 02:
9 Montreal. That's what we call an airlines code or country code. 02:
10 Sorry. 02:

11 Q. Okay. Now, turning to this next one that I just moved my 02:
12 pen, the second entry, could you explain what those codes mean. 02:

13 A. Yes. That would be passenger's name, that would be -- the 02:
14 8/13/07 would be the travel date. Coming back the "0" would be 02:
15 an outbound flight, meaning from -- to Singapore, departing LAX. 02:

16 Q. Okay. And this next one. 02:

17 A. Next one, passenger's name again. 8/19/07 is the inbound 02:
18 date, date of travel. "I" again is for an inbound flight. 02:
19 Arriving airport would be LAX. Departure airport, they left 02:
20 Narita into LAX. 02:

21 Q. Now, who reports this information into the TECS? 02:

22 A. This information is transmitted by data transcribers based 02:
23 on the Customs declaration and also the entry into the TECS 02:
24 system. 02:

25 Q. By -- the entry into the TECS system, what do you mean by 02:

1 that?

2 A. Every airlines is responsible for manifesting a passenger's
3 name so when you reach a primary officer and your document is
4 swiped, then you as an officer confirm if that passenger is on
5 that flight or not. So once you're confirmed, then that
6 information transmits into the TECS communication system which
7 produces this -- your border crossings.

8 Q. So the information in here comes from swiping people's
9 passports and information provided by the airlines; is that
10 right?

11 A. Yes.

12 Q. Thank you.

13 I'd like to show you -- and I'm not going to walk
14 through every single entry in all these records with you. I
15 would like to show you a couple on this page, though, however.

16 Let's take a look at this one right here. Do you see
17 where I'm referring? It's the bottom of the second page of the
18 report which is Bates stamped 2689. Do you see that?

19 A. Yes.

20 Q. Could you please walk us through the dates of travel,
21 destination, etc., like you did before for the other records.

22 A. Sure. I'll -- I'll start from this entry here. Subject's
23 name, travel date was 4/3/05. It's an inbound flight. Departed
24 Singapore into LAX.

25 Q. Okay. Can you tell which terminal at LAX?

1 A. Yes. A-273 is the site code for a terminal and that's the
2 Tom Bradley International Terminal.

3 Q. That's the same terminal we were just looking at in the
4 pictures?

5 A. Yes.

6 Q. What about this entry right below it?

7 A. The entry below -- it's a departure flight based on the "O"
8 for outbound. Departure date was 3/29/05. Departed LAX,
9 arriving airport was Singapore.

10 Q. So we have 3/29/05 to 4/3/05. Thank you.

11 Okay. And the remainder of that record contains the
12 same sorts of codes reflecting travel as you described?

13 A. Yes, for both inbound and outbound flights.

14 Q. Thank you.

15 I'd like to turn now to the next exhibit, which is
16 Exhibit 47. So if you would just look that over, and when you
17 are done, just look up at me. Thank you.

18 What were you just looking at there.

19 A. These are secondary examination records that are into the
20 Treasury Enforcement Communication Systems.

21 Q. And what kind of information is in those?

22 A. They're secondary exam records that are based on your
23 secondary exam either in baggage 0 or it can even be
24 agriculture. The information that's obtained on here, some of
25 it is taken from your passport, and if it's not from your

1 passport, it's input by the officer itself based on the 02:
2 secondary examination. It will give the carrier that you came 02:
3 on, your flight number. It will tell what airport you departed, 02:
4 what -- where you're arriving and then it will list if your bags 02:
5 were examined, yes or no, if you had a personal search completed 02:
6 on you, that would be a yes or no, and it gives you an 02:
7 opportunity to put remarks in there based on your examination 02:
8 results. 02:

9 Q. So the secondary inspector has a place in there to write 02:
10 remarks? 02:

11 A. Yes. 02:

12 Q. I'd like -- well, first of all, are these records that you 02:
13 either pulled or someone on your behalf pulled in connection 02:
14 with your involvement in this case? 02:

15 A. Yes. I did actually -- I was able to pull several 02:
16 secondary exam records from 2002 through 2008. 02:

17 Q. Okay. And do these all appear to be records that are 02:
18 maintained in the TECS system as you described? 02:

19 A. Yes. 02:

20 Q. Thank you, Chief Armijo. 02:

21 Your Honor, the United States moves to have Exhibit 47 02:
22 entered into evidence and for permission to publish? 02:

23 THE COURT: Any objection to 47? 02:

24 MR. GLUCK: None. 02:

25 THE COURT: Thank you. 47 is ordered admitted, and 02:

1 you may publish.

2 (Government's Exhibit 47 was received)

3 BY MR. WIDMAN:

4 Q. I would like to draw your attention to a few particular
5 pages here in this exhibit. First I would like to draw your
6 attention to -- I believe it should be the fourth page in. It
7 has a little number at the bottom right that reads 002682. Do
8 you see that?

9 A. Yes.

10 Q. I'm going to place that on the overhead projector. Would
11 you please explain what these codes and the information in this
12 document mean. Why don't we start here at the top. What is
13 this, where my pen is pointing at?

14 A. Yes. This would be the passenger's name that had the
15 secondary examination conducted on them. So it would be the
16 passenger's first and last name. Something of relevance, too,
17 would be the inspection date which would be up here. The
18 4/3/2005 would be the inspection date.

19 Q. Okay. Is the inspection location listed anywhere on this
20 form?

21 A. Yes. That would be again what we call a Site ID Code, the
22 A-273, and then the terminal would say the Bradley airport is
23 the Bradley Terminal.

24 Q. Can you explain to us what these codes here mean, and I'm
25 directing my finger at the words "bag exam."

1 A. Baggage exam means -- was the baggage that the passenger
2 was bringing, was that actually inspected, and "Y" means "yes"
3 and "N" would be for "no."

4 Q. Thank you.

5 I'm now going to put up the next sheet in sequence,
6 which is Bates stamped 002683. And can you please clear the
7 screen.

8 Could you please explain to us what this means.

9 A. Yes. Based on the previous screen, the previous screen, if
10 you hit a function on your keyboard that would be like a P-F --
11 Shift P-F-2, you would be able to obtain the name of the officer
12 that conducted the exam, and this is what this -- this screen is
13 a screen that you would get, so this says that it was conducted
14 by inspector and last name would be Cuevas and that would be the
15 first initial of the officer's name.

16 Q. Now, do you know Inspector Cuevas?

17 A. Yes, I do.

18 Q. What is his first name?

19 A. Alfredo.

20 Q. Thank you.

21 I'm now going to place the next page in this exhibit
22 on the overhead projector, which is Bates stamped 003645 on the
23 overhead projector.

24 Now, before at te outset, I have to note there are
25 some holes -- well, there are some circles. Are these -- and

1 outlines of circles on the document at the top. Do you have any
2 explanation for why these are here, these circles?

3 A. It's -- it's probably a copy, and they were in a binder.

4 Q. Now, can you explain to us what we're looking at here in
5 this form?

6 A. This would be the inspection results that you would
7 complete based on the two prior screens we saw that was the
8 secondary inspection screen. This would be the second screen
9 that you can get to put your remarks in.

10 Q. What was the date of this secondary inspection?

11 A. That was 2005. 04/03/2005.

12 Q. That means April 3rd, 2005?

13 A. Yes.

14 Q. Thank you. Here it just says AX. Do you have any idea
15 based on your experience what that means?

16 A. Yes. That would just be an abbreviation. It should say
17 PAX for passenger.

18 Q. And it looks like it got cut off at some point by the
19 holes?

20 A. Yes.

21 Q. Now, it says, "PAX was in India to visit his family for
22 one month. PAX is a doctor." When you were an officer, did you
23 ever ask passengers how long they had been traveling?

24 A. Yes.

25 Q. Thank you.

1 Turning now to exhibit -- turning now to Exhibit 48 -- 02:
2 actually, why don't you just leaf through Exhibits 48, 49, 50, 02:
3 51, 52, and 53. Just leaf through, familiarize yourself with 02:
4 them, and when you are done, look up, please. 02:

5 What are those exhibits that you were just looking at? 02:

6 A. Those are exhibits -- are the same type of travel for 02:
7 inbound and outbound border crossings and secondary inspection 02:
8 records on a few passengers. 02:

9 Q. Which passengers are you referring to? 02:

10 A. I'm referring to passenger Young, first name Jessica; Yip, 02:
11 first name Velma; Mhaskar, first name Supriya, and that was the 02:
12 last passenger. 02:

13 Q. Thank you, Chief Armijo. 02:

14 Now, these are records that are kept in the TECS 02:
15 system? 02:

16 A. Yes. 02:

17 Q. And these are records that you or someone on your behalf 02:
18 collected in connection with this case? 02:

19 A. Yes. 02:

20 MR. WIDMAN: Thank you. 02:

21 Your Honor, the United States moves to have Exhibits 02:
22 48 through 53 entered into evidence and published to the jury. 02:

23 THE COURT: Any objection? 02:

24 MR. GLUCK: Your Honor, I hate to do this late on a 02:
25 Friday afternoon, but we would object. To the extent the 02:

1 witness is not going to explain what they are, we think they are 02:
2 pretty confusing. I'm not asking that every page be gone 02:
3 through. 02:

4 THE COURT: Well, I'm going to order them admitted, 02:
5 but we'll take up separately the issue of what actually out of 02:
6 each page has to be admitted of each document, and I will take 02:
7 that up with counsel as to exactly what I mean by that later. 02:

8 So right now they are conditionally admitted, 48 02:
9 through 53 are conditionally admitted for the time being so you 02:
10 may continue to examine and publish them. 02:

11 MR. WIDMAN: Thank you, Your Honor. 02:

12 THE COURT: You're welcome. 02:

13 (Government's Exhibits 48 through 53 were conditionally
14 received.) 02:

15 BY MR. WIDMAN: 02:

16 Q. Now I'm going to place on the overhead projector 02:
17 Exhibit 48. What is this page? 02:

18 A. Again, this is the name of the passenger that you're 02:
19 querying, last name Young, first name Jessica, the date of 02:
20 birth, and below here would be the time frame that you're 02:
21 requesting. 02:

22 Q. Thank you. Can you please clear the screen. 02:

23 Okay. Let's just walk through this. I promise to go 02:
24 a little bit more summary fashion with respect to this form. 02:

25 Let's take a look at this first one right here. Can 02:

1 you please interrupt these codes for the jury.

2 A. Yes.

3 Q. I am going to zoom out a little.

4 THE COURT: When you say these codes, for the purpose
5 of the record, Mr. Widman, are you referring to the third --
6 what would be the third column if they were in a clearly
7 demarcated column.

8 MR. WIDMAN: If they were, I would.

9 THE COURT: So does that mean that if they are, you
10 are. If we imagine them to be in a clearly demarcated column,
11 that's what you are referring to?

12 MR. WIDMAN: Perhaps I can rephrase, Your Honor.

13 THE COURT: My question?

14 MR. WIDMAN: No.

15 THE COURT: I sustain your objection to my question.
16 Go right ahead.

17 MR. WIDMAN: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 BY MR. WIDMAN:

20 Q. Let's take a look at the first row right here where my pen
21 is pointing. And I realize the columns are a little unaligned.
22 But could you please explain to the jury what this information
23 means in the first row.

24 A. Sure. It's passenger's name, Young. Right here would be
25 Jessica. Travel date would be 09/05/05.

1 Q. Do you know where, from where --

2 A. It's the --

3 Q. -- to where the passenger was traveling?

4 A. That would be the A-535 represents Houston International
5 Terminal. IAH would be the arriving airport. TGU I'm
6 unfamiliar with.

7 Q. Do you know what TGU is?

8 A. It's another country code.

9 Q. Do you know what IAH is?

10 A. Yes. That's Houston Airport's code.

11 Q. That's the George Bush International Airport in Houston,
12 Texas?

13 A. Yes.

14 Q. Thank you. I'd like now to refer to the record. I think
15 it's several in. It's Bates stamped 002718 on this same
16 exhibit, and can you please clear the screen.

17 Let's take a look at what appears to be the second
18 row, the second travel here. The second time the name Young
19 appears from the line straight across the page.

20 Could you please explain what this entry means?

21 A. Yes. Again, passenger's name. 11/19/09 would be the
22 travel. The A-534 would be Houston.

23 Q. From where to where?

24 A. It would be an inbound flight from IAH -- coming into
25 Houston from TGU.

1 Q. And you're not familiar with which airport TGU refers to? 02:

2 A. Correct. 02:

3 Q. Okay. Thank you. Okay. 02:

4 Turning now to Exhibit 50, which has already been 02:
5 entered into evidence conditionally, could you please just 02:
6 briefly tell us what we're looking at here? 02:

7 A. Yes. It's a request for again passenger's name, 02:
8 passenger's date of birth, and the time frame that you're making 02:
9 the request. 02:

10 Q. And we're now looking at the second page Bates stamped 02:
11 002724, and can you please clear the screen, Chief Armijo. 02:
12 Directing your attention to the second row, the second time the 02:
13 word Yip appears after the horizontal line, could you please 02:
14 explain to the jury what that information means. 02:

15 A. Yes. Passenger's name, Yip; date of travel, 03/25/08. 02:

16 Q. Do you know where the passenger was traveling from and to 02:
17 where? 02:

18 A. Arrival code is Guam. Left LAX. 02:

19 Q. So was it from Guam to LAX or the other way around? 02:

20 A. It departed LAX. So that's an actual outbound flight. 02:

21 Q. Thank you. 02:

22 And can you please interpret for the jury the one 02:
23 directly above that, closer to the top of the page. 02:

24 A. The one where I just marked -- 02:

25 Q. Yes. 02:

1 A. Yes. Passenger's name again. Travel would be 04/05/08.
2 Location code would be A-273, Los Angeles, Bradley Terminal, and
3 it was an inbound flight arrived at LAX and departed Manila.

4 Q. Thank you.

5 Now, this form doesn't have information regarding
6 whether the passenger was secondary or not, does it?

7 A. No. It's just its crossings.

8 Q. Okay. Here is the next exhibit, which is Exhibit 51. Can
9 you please explain to us what this is?

10 A. Yes. This would be a secondary inspection as stated above.

11 Q. And what is -- what information is contained here?

12 A. Name of the passenger, date of birth of the passenger, date
13 ranges that you're requesting for the secondaries, and again if
14 it's an inbound or outbound flight and baggage examination and
15 results.

16 Q. Can you tell from this form whether or not there is any
17 record of this passenger being secondary?

18 A. There is no record.

19 Q. Is that for any particular flight or is it just in the
20 entire system?

21 A. It's based on the date range that you conducted for the
22 passenger from 2002 through 2009.

23 Q. Thank you. Can you please clear the screen. Thank you.

24 The next exhibit is Exhibit 52 which I have now placed
25 on the overhead projector. Could you please tell us what this

1 is. This is the first page, 2726. 02:

2 A. Yes. This would be a request for a passenger's travel 02:
3 based on passenger's first and last name, their date of birth 02:
4 and the time frame you're making the request. 02:

5 Q. Thank you. 02:

6 A. This is -- 02:

7 Q. I'm sorry. Were you not finished? 02:

8 A. I was just going to say the traveler's name, Mhaskar 02:
9 Supriya. 02:

10 Q. Okay. 02:

11 Now flip the page, and we are looking at the next page 02:
12 in the exhibit which is Bates stamped 2727. Could you please 02:
13 interpret for us, if you can, this entry that I'm referring to 02:
14 which is the fourth from the bottom row? 02:

15 A. This entry here would be for the passenger. The time frame 02:
16 that they traveled, 03/31/07. Location code would be JFK. The 02:
17 "I" would be an inbound flight into JFK from FCO. 02:

18 Q. Do you know what FCO is? 02:

19 A. I'm unfamiliar with FCO. 02:

20 Q. But by definition this would have to be in an airport 02:
21 located in another country; is that right? 02:

22 A. Correct. 02:

23 Q. Let's take a look at the last row on this page where I have 02:
24 placed my pen. Would you please interpret that one for us? 02:

25 A. Sure. Again, passenger's name. Date of travel, 03/07/08. 02:

1 A-273 is LAX, Bradley Terminal. It's an inbound flight, inbound
2 into LAX from LHR, which is London Heathrow.

3 Q. Thank you.

4 I would now like to ask you a few questions about
5 Exhibit 53, which I'm placing on the overhead projector now.

6 Could you clear the screen and explain for us what we
7 are looking at here.

8 A. This is a secondary inspection screen. Date of inspection
9 would be 10/14/2008. Passenger's name would be Mhaskar Supriya.
10 Date of birth for the passenger. Passport, document number of
11 the passport, the issuing country so it was a U.S. citizen.
12 Passenger came on BA, which is British Airlines Flight No. 279.
13 It was an inbound flight. Passenger departed London Heathrow,
14 embarked in Bombay and arrived into LAX.

15 Q. Now, the date of this secondary inspection was October 14,
16 2008; is that right?

17 A. Correct.

18 Q. Thank you.

19 I'd now like you to look at Exhibits 54 through 56.
20 Excuse me. Exhibits 54 through 57. Once you have had a chance
21 to look those over, could you please look up to signal that you
22 are ready to continue. Thank you.

23 First of all, I would like to refer you to Exhibit 54
24 which has already been entered into evidence in this case, and I
25 am going to place it on the overhead projector. Do you

1 recognize that document, Ms. Armijo? 02:

2 A. Yes. 02:

3 Q. What is it? 02:

4 A. It's a Customs form. 02:

5 Q. Is this one of the Customs forms that you collected or 02:
6 someone on your behalf collected in connection with this case? 02:

7 A. Yes. 02:

8 Q. Do you know why there is only a copy of this document? 02:

9 A. I believe the original was requested earlier through the 02:
10 year, and it probably wasn't placed back into the -- into the 02:
11 original box, and only the copy was left when it was pulled. 02:

12 Q. Thank you. 02:

13 I would like you to take a look again, I guess, at 02:
14 Exhibits 55, 56 and 57. What are those? 02:

15 A. They're all Customs declarations for various passengers. 02:

16 Q. Are they declarations that you collected in connection with 02:
17 this case? 02:

18 A. Yes. 02:

19 Q. Okay. 02:

20 Your Honor, the United States moves to have Exhibits 02:
21 55, 56 and 57 entered into evidence and for permission to 02:
22 publish them. 02:

23 THE COURT: Any objection? 02:

24 MR. GLUCK: None, Your Honor. 02:

25 THE COURT: 55, 56 and 57 are ordered admitted. You 02:

1 may publish.

2 (Government's Exhibits 55, 56 and 57 was received.)

3 BY MR. WIDMAN:

4 Q. Let's take a look at this form which is Exhibit 55. Let's
5 first take a look at the right half of the form. Now, allow me
6 to ask you this, Chief Armijo. This black -- black marker or
7 whatever, these black images here, did you place those on here?

8 A. No.

9 Q. When you collected this form, were those images on there?

10 A. No.

11 Q. And do you know what this up here means? This -- this dark
12 handwritten something that appears to have an "M" on the end?

13 A. Yes. It's -- actually it's a "T" with a slash and an "M"
14 and that would be written by a primary officer and that's
15 considered TECS match.

16 Q. What does that mean?

17 A. It -- a TECS match would be that you have a record on you.
18 Once your passport is swiped, there is a record on you in the
19 system, and basically you warrant a referral to a secondary area
20 based on prior information.

21 Q. Okay. And do you know what this language at the bottom
22 refers to?

23 A. Yes. The Dao is actually a current officer. That's his
24 name, Dao, and then the slash, and that's his badge number.

25 Q. Okay. Thank you.

1 Turning now to the next exhibit, which has already 02:
2 been entered into evidence as Exhibit 56 which I'm placing on 02:
3 the overhead projector. 02:

4 Now, is this one of the declarations that you 02:
5 collected in connection with your involvement in this case? 02:

6 A. Yes. 02:

7 Q. Thank you. 02:

8 Turning now to Exhibit 57, which I'm placing on the 02:
9 overhead projector, is this one of the declarations you 02:
10 collected in connection with this case? 02:

11 A. Yes. 02:

12 Q. And I would like to draw your attention to this language at 02:
13 the bottom of the form -- date, day, month, year. Could you 02:
14 explain what that means? 02:

15 A. Yes. The -- the date of arrival that you signed that 02:
16 declaration. 02:

17 Q. Do you have any idea why the month isn't before the day as 02:
18 opposed to vice versa? 02:

19 A. Outside of the U.S., sometimes they will reverse -- we put 02:
20 month, day, year but foreign travelers are used to the opposite. 02:

21 Q. Thank you. 02:

22 And is there a Bates stamp on here that you can see? 02:

23 A. Yes. If you look at this area here, that's the stamp that 02:
24 each primary officer is assigned to and that's the date of 02:
25 admission, July 3rd, 2008. 02:

1 Q. Thank you. 02:

2 THE COURT: Is now a good breaking point? 02:

3 MR. WIDMAN: I am awfully close to the very end, 02:
4 Your Honor. 02:

5 THE COURT: Then keep going. 02:

6 BY MR. WIDMAN: 02:

7 Q. With respect to Dr. Patwardhan's inquiries, did you conduct 02:
8 an ACS search? 02:

9 A. Yes. 02:

10 Q. What is ACS? 02:

11 A. Automated Commercial Systems. 02:

12 Q. What was the results of that search? 02:

13 A. It was negative. 02:

14 Q. Did you conduct a TECS search for searches, arrests or 02:
15 seizures? 02:

16 A. Yes. 02:

17 Q. What was the result of that? 02:

18 A. It was negative. 02:

19 Q. What about the SQAD search? Was there any results for 02:
20 Dr. Patwardhan? 02:

21 A. No. Negative. 02:

22 Q. Let's turn now to Jessica Young. Did you conduct an 02:
23 Automated Commercial System search for her? 02:

24 A. Yes. 02:

25 Q. What were the results? 02:

1 A. Negative.

2 Q. When you say "negative," you mean you didn't find anything?

3 A. Right. It didn't link to any type of seizures or arrests
4 or even prior entries filed by the person.

5 Q. And what about the TECS search?

6 A. TECS search showed border crossings and one secondary
7 inspection.

8 Q. Thank you. I know we have covered that at some length.

9 What I meant to say what the TECS search for searches, arrests
10 or seizures?

11 A. No. Negative.

12 Q. What about the SQAD search for Ms. Young?

13 A. Negative.

14 Q. Without objection, I am going to combine the following
15 questions for passengers Velma Yip and Supriya Mhaskar. Did you
16 conduct ACS searches on both of them?

17 A. Yes.

18 Q. What were the results of those searches?

19 A. Negative as well.

20 Q. For both?

21 A. Yes.

22 Q. What about the TECS searches, arrests or seizure inquiries?

23 A. Negative for searches or arrests.

24 Q. For both?

25 A. Yes.

1 Q. What about the SQAD searches for those two passengers? 02:

2 A. Negative on their addresses as well. 02:

3 Q. And what was the time periods that you used for conducting 02:
4 those searches? 02:

5 A. It wasn't a time period. You can just -- once you have a 02:
6 passenger's name and date of birth, you can see any travel that 02:
7 they've made or any type of secondary exams or border crossings. 02:
8 So we conducted what we consider a thorough search. We did any 02:
9 type of travel history. 02:

10 Q. So all the records -- consistent with your testimony about 02:
11 how long the records are kept, all the records that would be 02:
12 there -- well, let me put it this way. 02:

13 For those that you testified are kept permanently, you 02:
14 searched all the records? 02:

15 A. Yes. 02:

16 MR. WIDMAN: Your Honor, I believe this is an 02:
17 excellent breaking point. 02:

18 THE COURT: All right. 02:

19 Thank you, ladies and gentlemen, for your work this 03:
20 week. We'll be in recess, as far as you're concerned, until 03:
21 Tuesday. I think I told you that you're only here Tuesday 03:
22 through Friday because there are other cases on Mondays. So we 03:
23 will see you back Tuesday morning at 9:00. 03:

24 Remember, don't discuss the case, don't communicate 03:
25 about the case at all in any fashion over the next -- well, ever 03:

1 until you are discharged, but particularly over the next few
2 days until I have a chance to remind you again. That means
3 don't discuss it with anyone, your family members, your
4 co-workers, if you're going to work on Monday or over the
5 weekend, friends, neighbors, acquaintances, anyone. That means
6 the testimony, the witnesses, anything you saw or heard in the
7 courtroom or anything related to the case.

8 If there are any media reports about the case, don't
9 listen, watch, read them, look at them on the Internet. Don't
10 do any research on the Internet, don't post anything on the
11 Internet, don't email, don't participate in any chat rooms,
12 either in this case or even about the subject matter about this
13 case or anything that you have seen, learned or heard during the
14 course of this trial related to the case in the broadest
15 possible sense. And don't make up your minds about the case or
16 any issue in the case.

17 Thank you so much, ladies and gentlemen. You're
18 excused.

19 (Jury Out)

20 THE COURT: You may step down, and you may be seated.

21 The documents that were handed to me for an in camera
22 review earlier today I want to return.

23 MR. WIDMAN: Your Honor, that raises a good point. We
24 would like to clarify the record regarding what documents we
25 provided to the Court. That wasn't the proceeding -- I believe

1 it was the proceeding that was off the record before so we
2 may --

3 THE COURT: I think it was on the record.

4 MR. WIDMAN: Wasn't that part where Phyllis --
5 Ms. Preston left?

6 THE COURT: No. That was --

7 MR. WIDMAN: Remember, I annoyed everyone in the room
8 by saying there is just one more thing and then you allowed
9 Ms. Preston to leave. I believe the "one more thing" was the
10 Customs records.

11 THE COURT: Well, perhaps we should, just to be safe,
12 put it on the record. Maybe you're right. So go ahead.

13 MR. WIDMAN: This morning after Ms. Preston, the court
14 reporter, was excused for the lunch hour, the parties and the
15 Court discussed -- continued the discussion from Tuesday
16 morning, April 28th, regarding defense's request for certain
17 records pertaining to Customs and Border Protection officials,
18 Melisa Armijo and Alfredo Cuevas in particular, regarding, as
19 the Court detailed in more specificity than I will do here --
20 regarding FDA importation policies and secondary procedures in
21 particular, reprimands or praise or anything in between on those
22 two things regarding Mr. Cuevas, as well as training records --
23 I'm going to have to -- I'm just going to have to refer to what
24 the exact categories were because I think the categories might
25 have been slightly different from Ms. Armijo from the record on

1 Tuesday. That discussion was continued. The Government told
2 the Court that we received additional materials and information
3 from counsel's office at Customs and Border Protection
4 concerning the contents of their personnel files and the
5 Government also raised certain training records pertaining to
6 these two individuals that we had received several days ago.

7 The Government said that the Government's position was
8 and continues to be that the training records don't contain
9 anything within the categories set forth by the Court and that
10 with respect to the personnel records, the Government feels the
11 same way based on their inspection of the materials, that there
12 is nothing discoverable in any of those materials subject to an
13 in camera review by the Court, which I understand the Court has
14 conducted, and --

15 THE COURT: The Court conducted the in camera review
16 of the documents that were produced as to Ms. Armijo and
17 Mr. Cuevas, and I apologize for not having their titles. It's
18 Chief Armijo, but I think it's just Agent Cuevas.

19 MR. WIDMAN: I think he goes by Inspector Cuevas.

20 THE COURT: Keeping in mind that I ordered the
21 Government to turn over in terms of discovery, I don't believe
22 there are any discoverable items, and what I ordered the
23 Government to turn over was broader than just Giglio, Jencks --
24 Giglio or Henthorn material. I reviewed everything to see if
25 there was anything else in the personnel files or the training

1 materials, and there isn't anything that comes within the 03:
2 categories that I set forth on the record on Monday or Tuesday, 03:
3 whenever that was. 03:

4 So I want to return the documents to the counsel for 03:
5 the Government. 03:

6 MR. WIDMAN: Your Honor, I actually have never gone 03:
7 through a situation quite like this. Would there be any way to 03:
8 keep a permanent record in the Court's file of the materials -- 03:

9 THE COURT: You can file them under seal. 03:

10 MR. WIDMAN: Okay. Perhaps that's what we will do. 03:

11 THE COURT: That's what you should do. 03:

12 MR. WIDMAN: To create a permanent record of what we 03:
13 gave you. 03:

14 THE COURT: Yes. 03:

15 MR. WIDMAN: Sounds great. 03:

16 THE COURT: Are you done with your direct, or are you 03:
17 not sure? You want to check your notes? 03:

18 MR. WIDMAN: I am about 95 percent sure I'm done. 03:

19 THE COURT: All right. And then you will have cross. 03:
20 Then who is your next witness? 03:

21 MR. BEHNKE: Actually that creates or brings us to an 03:
22 issue, Your Honor, that I actually haven't had a chance to talk 03:
23 to counsel about because it didn't even occur to me how the 03:
24 scheduling was going until we got to this point. 03:

25 Our next witness is going to be Charlene Craven. She 03:

1 is a representative from Palmetto who is a -- a Medicare
2 provider. I believe she is going to be short on testimony, just
3 very briefly explaining the collection of submissions and
4 payment of Medicare claims by the defendant. The problem that
5 it raises, though, is she is flying in from out of town, and I
6 can't recall exactly what the situation is, but I think one of
7 her relatives is having a medical procedure or something --

8 MR. WIDMAN: Your Honor, if I may.

9 THE COURT: You want to put her on out of order?

10 MR. BEHNKE: Yes, Your Honor.

11 THE COURT: First thing on Tuesday morning.

12 MR. BEHNKE: Yes, Your Honor. So we can put her on a
13 flight back out as soon as possible.

14 MR. GLUCK: Put her on and then do the rest with
15 Armijo?

16 MR. BEHNKE: Yes.

17 MR. GLUCK: That's fine.

18 THE COURT: We will call her first. That was
19 Ms. Craven?

20 MR. BEHNKE: Yes, Your Honor.

21 THE COURT: You think maybe an hour total for her?

22 MR. BEHNKE: I think that's fair. I don't expect to
23 be more than 20 or 30 minutes.

24 MR. GLUCK: May I ask a question in connection with
25 Ms. Craven? Is she the one -- that CD I was handed the first

1 day of trial?

2 MR. BEHNKE: Yes.

3 MR. GLUCK: That relates to her?

4 MR. BEHNKE: Yes.

5 MR. GLUCK: That is an open issue as far as I'm
6 concerned. The first day of trial we were handed a CD with
7 claims data. That's all we were told. I don't know what is on
8 it, and I was told there was going to be some summary of it, but
9 as far as -- that's all I know and hope --

10 THE COURT: To have a chance to discuss that with
11 Government counsel?

12 MR. GLUCK: I had hoped to see it first and then have
13 a chance to discuss it. There could be many, many thousands of
14 pages of data that is purported to be summarized there. I just
15 don't know.

16 MR. BEHNKE: The data on the disk is very, very long,
17 and given that the allegation in this case is conspiracy and
18 even if it was a substantive violation of 641 in terms of dollar
19 value, the only thing that needs to be shown is that it exceeded
20 a thousand dollars.

21 I'll talk to counsel, but we're not planning on
22 getting into volumes and volumes of detailed data concerning
23 every code that was billed or anything like that which is what
24 is on that disk.

25 THE COURT: Let him know which ones you intend to

1 inquire of her about so he doesn't have to prepare a cross that 03:
2 goes through every one of them to have you ask about 10 or 15. 03:
3 MR. BEHNKE: Yes, Your Honor. I don't even think it's 03:
4 going to be that many. 03:
5 THE COURT: So let Mr. -- 03:
6 MR. GLUCK: Appreciate that. 03:
7 THE COURT: -- Gluck know -- 03:
8 MR. BEHNKE: Yes, Your Honor. 03:
9 THE COURT: -- by the end of the day tomorrow. 03:
10 MR. BEHNKE: Oh, yes, Your Honor. 03:
11 THE COURT: If not this afternoon. 03:
12 MR. BEHNKE: Yes, Your Honor. 03:
13 THE COURT: Fine. Then who is your next witness? 03:
14 MR. BEHNKE: And then -- yeah. Then we would have 03:
15 Inspector Cuevas and -- Inspector Cuevas and Jessica Young. 03:
16 THE COURT: All right. How long for Inspector Cuevas? 03:
17 MR. BEHNKE: About 30 minutes on direct, Your Honor. 03:
18 THE COURT: And Ms. Young? 03:
19 MR. WIDMAN: Ms. Young is going to take considerably 03:
20 longer, depending on -- considerably longer. I would say 03:
21 probably in the neighborhood of two to three hours. 03:
22 THE COURT: Did Kathy Walton testify? 03:
23 MR. WIDMAN: Yes, Your Honor, she did. 03:
24 MR. GLUCK: She was the one who took the medicine 03:
25 home? 03:

1 MR. BEHNKE: She testified at the end of the day
2 yesterday.

3 THE COURT: Oh, that was Ms. Walton. I'm sorry.

4 MR. WIDMAN: Must have made an impression on the
5 Court?

6 THE COURT: I didn't remember her name. I'm sorry.

7 MR. GLUCK: The picture thing is a good idea.
8 Brilliant.

9 THE COURT: Thank you. Actually, I think it is a
10 really helpful thing.

11 MR. GLUCK: I could use --

12 THE COURT: Well, actually I'm glad you said that
13 because I must not have told counsel this, but for your
14 closings, we will give a set to counsel to use during your
15 closings that you have to share, but both sides have a set to
16 use, and I encourage you to use them.

17 All right. All right. Now, what I was going to tell
18 you both about the exhibits is that what we do at the end of the
19 trial is once -- as to everything that has been admitted but
20 maybe in retrospect you haven't really used it, you -- you have
21 to meet and confer and go over everything with Ms. Dillard, and
22 it's better if you do it right -- maybe like the night before we
23 send everything to the jury or send the case to the jury so
24 they're not in the jury room waiting for the exhibits to make
25 sure that you're in agreement about what got admitted and what

1 didn't. So what we are sending back to the jury room in terms
2 of exhibits everybody is in agreement on and nothing gets sent
3 back that wasn't admitted and everything does get sent back that
4 was. And in the course of doing that, you may agree that some
5 things that you either stipulated to or that were admitted you
6 never inquired about. So that usually takes care of the problem
7 of when either an exhibit of many pages or many photographs were
8 admitted but nobody ever then asked any questions about it, you
9 may stipulate at the end of the case to withdraw some pages or
10 some parts of a document. So I understand -- and I agree with
11 the concern about something may be authenticated and the witness
12 may say, "Yes, I either took all the photographs" or "That's my
13 signature on the end of a document," but at the end of the case,
14 it may be that they never have really been explained. And you
15 can either -- if you can't stipulate to withdraw it after you
16 have talked to one another, you can bring it back up with me.
17 Because if there -- even though somebody -- even though it was
18 admitted and there was a foundation for it, if it really hasn't
19 been explained or described to the jury, I'll entertain a motion
20 to strike it because I don't want them back there speculating
21 about something.

22 MR. BEHNKE: Right. No. Understood, Your Honor.

23 THE COURT: So, you know, to shorten things up, unless
24 it's, you know, something that is really scandalous or
25 potentially prejudicial, I will usually let it in if there is a

1 foundation despite that because some other witness may be 03:
2 explaining it if it's a photograph or something. But if it's 03:
3 not used, we probably won't send it back. 03:

4 MR. GLUCK: Your Honor, with that understanding, I 03:
5 will stop worrying about that issue now. 03:

6 THE COURT: That's fine. You can always raise it at 03:
7 the end. Usually what happens at the end when people sit down 03:
8 with Ms. Dillard, like I said, she says they want to put a 03:
9 stipulation on the record that they want to withdraw, 39, 86 and 03:
10 1022, or whatever it is, which is fine. So just that in mind. 03:

11 Anything else? 03:

12 MR. GLUCK: Do you want to -- unfortunately -- do you 03:
13 want to talk about the -- 03:

14 MR. BEHNKE: Yes, Your Honor. I'm sorry. The -- 03:
15 there has been ongoing, I guess negotiations, if you will, and 03:
16 work between the AUSA in Los Angeles who has been reviewing the 03:
17 Jessica Young notebooks and I believe Ms. Rhee and Mr. Gluck, 03:
18 and I believe it's to the point where today, my understanding 03:
19 is, Ms. Feldman, who is doing the review for our office, did an 03:
20 in camera submission and attached what I believe is only a 03:
21 handful of pages of the notebook for the Court's review to 03:
22 determine the issue of privilege. 03:

23 THE COURT: All right. 03:

24 MR. BEHNKE: I don't -- beyond that, I don't know 03:
25 anything about the filing. 03:

1 MR. GLUCK: I just want to put one thing out there.

2 This was filed by Ms. Feldman. We haven't seen it. She has
3 been working with Ms. Rhee around the clock trying to get this
4 thing finished. They have both been working on it very hard.

5 From our side, I have never been in this situation
6 before where we have kind of an entity privilege, an individual
7 who has her own privilege, and especially what really makes it
8 difficult for us is it's an individual who frankly we can't
9 speak to right now and who is a cooperating witness, etc., etc.

10 I think if this were a normal situation, we would sit
11 down with Jessica Young and we would say what did you write
12 there, why did you write that, and we would know whether
13 something is or isn't privileged.

14 A lot of what is at issue, in my understanding, in
15 these pages comes from our lack of knowledge. And our
16 meaning -- we can't ask Jessica Young and get an answer from her
17 and --

18 THE COURT: So if I understand this -- pardon me for
19 interrupting you. If I understand this right, you looked at
20 this, you said it was privileged?

21 MR. GLUCK: Ms. Rhee, can you explain exactly what is
22 left because --

23 THE COURT: Right. In other words, you did a
24 privilege log?

25 MS. RHEE: What happened, Your Honor, is that the

1 notebooks are actually all initially turned over to the taint 03:
2 attorney, and the taint attorney reviewed all of the pages which 03:
3 is I guess almost 700 pages of handwritten notes and produced a 03:
4 privilege log to us, along with the pages that she thought were 03:
5 either our privilege alone or not privileged at all. And then 03:
6 we reviewed those and then we met -- and then we designated 03:
7 additional pages, only a handful that we thought were 03:
8 potentially privileged as well. 03:

9 And she and I have met and conferred many, many times, 03:
10 including last night really late before she, you know, dropped 03:
11 off the ex parte, and we whittled it down to I think it's only 7 03:
12 pages that are at issue, and most of them we have never seen 03:
13 because they actually -- those pages are dated after July 30, 03:
14 2008, and so we're already in a time period after the search, 03:
15 and I think at least two or three of them involve Jessica Young 03:
16 and Ken Miller and his wife, Karen Miller, who are both her 03:
17 attorneys. And so we -- those have actually been kept from us 03:
18 as well. But they are all indicated in the privilege log. 03:

19 So some of the documents are documents over which we 03:
20 are claiming privilege and then some of the documents are 03:
21 documents over which she is claiming privilege. 03:

22 THE COURT: I guess my confusion is that your 03:
23 assertion of the privilege is based on what you have seen from 03:
24 Ms. Feldman? 03:

25 MS. RHEE: That's correct. 03:

1 THE COURT: That's my confusion. So -- 03:

2 MS. RHEE: But she is doing the logging. She has 03:
3 agreed on certain of the ones that we have designated and so she 03:
4 has logged those. It's only the couple -- 03:

5 THE COURT: Seven pages, that's fine. Really I 03:
6 appreciate very much your effort and Ms. Feldman's effort and 03:
7 please convey that to Ms. Feldman as well. 03:

8 MR. BEHNKE: We will, Your Honor. 03:

9 THE COURT: I really do. Seven pages. I have seen 03:
10 those logs that come in, so I know that there is a lot of 03:
11 documents that you have -- I know there is a lot of work to have 03:
12 gotten it down to seven pages, but just so I understand what 03:
13 the -- it's not that I am going to ask you to do any more. I am 03:
14 very persuaded you have done everything you could do. But your 03:
15 assertion of the privilege on behalf of your client -- I guess 03:
16 my question is this. 03:

17 As I understand it, you are doing two things. You're 03:
18 asserting a privilege as to some of these documents on behalf of 03:
19 your client and you're also challenging that some of the 03:
20 documents are privileged. 03:

21 MS. RHEE: Actually that's not correct. We are not 03:
22 challenging her designations on any of the ones that she has 03:
23 done on Jessica Young's behalf because we don't even know to 03:
24 challenge it. So she is just -- I think she is in the awkward 03:
25 position of -- she wants to give as many pages as she can to -- 03:

1 over to Mr. Widman, and she's just -- but she can't give him
2 pages that are also privileged as to Jessica Young either so
3 that's why she is turning those pages over to you. We are not
4 challenging those because we actually don't -- we don't know
5 anything other than the fact that Ken Miller --

6 THE COURT: But those would be pages that would only
7 we given to counsel for the Government?

8 MS. RHEE: Yes.

9 THE COURT: You won't be getting those?

10 MS. RHEE: We will not be getting those. If
11 Your Honor -- I mean, I don't --

12 THE COURT: Assuming --

13 MS. RHEE: Yes. But we are not challenging those.

14 THE COURT: What you're challenging is anything
15 that -- you're challenging a few pages that you say are
16 privileged as to -- that your client holds a privilege as to?

17 MS. RHEE: That is correct.

18 THE COURT: All right. But there are two types of
19 privilege that are at issue: The privilege that Ms. Young
20 asserts and the privilege that your client is asserting.

21 MS. RHEE: With respect to the pages over which we are
22 claiming a privilege, I don't think that Ms. Young is claiming a
23 private at that point. I think we can kind of neatly divide
24 them by a timeline. So the pages over which we are claiming the
25 privilege actually fall squarely before the search at which time

1 Ms. Young did not have an attorney.

2 THE COURT: Right. But as to the few pages that I am
3 being asked to look at, they at least potentially fall -- the
4 could be one of two kinds, right? They could be pages as to
5 which there is potential -- pages that could be turned over to
6 the Government but not to the defense, and then there are the
7 pages as to which Dr. Patwardhan -- you're asserting a privilege
8 as to -- on Dr. Patwardhan's behalf.

9 MS. RHEE: That's correct.

10 THE COURT: That's what I needed to know.

11 MR. GLUCK: And we're doing so, unfortunately without
12 the insight that we would normally gain from talking to Jessica
13 Young.

14 THE COURT: All right. I will endeavor to review
15 those and get something to you on Monday or have Ms. Dillard
16 call you both on Monday and let you know what my that I have
17 reviewed them and what my -- what's going to be disclosed.

18 Anything else?

19 MR. BEHNKE: Just -- we still need to talk to defense
20 counsel about those. Just want to let the Court know we are
21 working on the limiting instruction that we discussed yesterday.
22 We have a proposal that we can share with defense counsel, get
23 their thoughts and hopefully come up with something by the time
24 we resume.

25 THE COURT: All right. Thank you. In the meantime, I

1 am going to return these documents that were given to me today
2 for the in camera review.

3 MR. WIDMAN: May I approach, Your Honor, and collect
4 them?

5 THE COURT: Yes. Thank you. And if that's not -- I
6 think that is everything, but I'll keep looking if it's not. It
7 could be that they got buried up here.

8 MR. WIDMAN: I think there is another --

9 THE COURT: There should be one more, I think.

10 MR. WIDMAN: A set of stapled sheets.

11 THE COURT: Eventually we will get them.

12 MR. WIDMAN: I know exactly what they are --

13 THE COURT: It might be Monday before they get
14 unearthed. We will get them back to you.

15 MR. WIDMAN: Okay. Thank you, Your Honor.

16 THE COURT: All right. We are in recess. Thanks.

17 (Proceedings adjourned at 4:50 p.m.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 18, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Pamela A. Seijas, CSR No. 3593
Official Reporter

Date

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Day 4
Friday, May 1, 2009
I N D E X

WITNESSES FOR THE
GOVERNMENT:

DIRECT

CROSS

REDIRECT

RECROSS

Velma Yip

4

Sylvia Thomas

23

30

Melisa Armijo

40

WITNESSES FOR THE
DEFENSE:

DIRECT

CROSS

REDIRECT

RECROSS

GOVERNMENT EXHIBITS:

MARKED

RECEIVED

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61-A through 61-T

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48 through 53 (conditionally)

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DEFENSE EXHIBITS:

MARKED

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